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Auditor's Compliance Supplement

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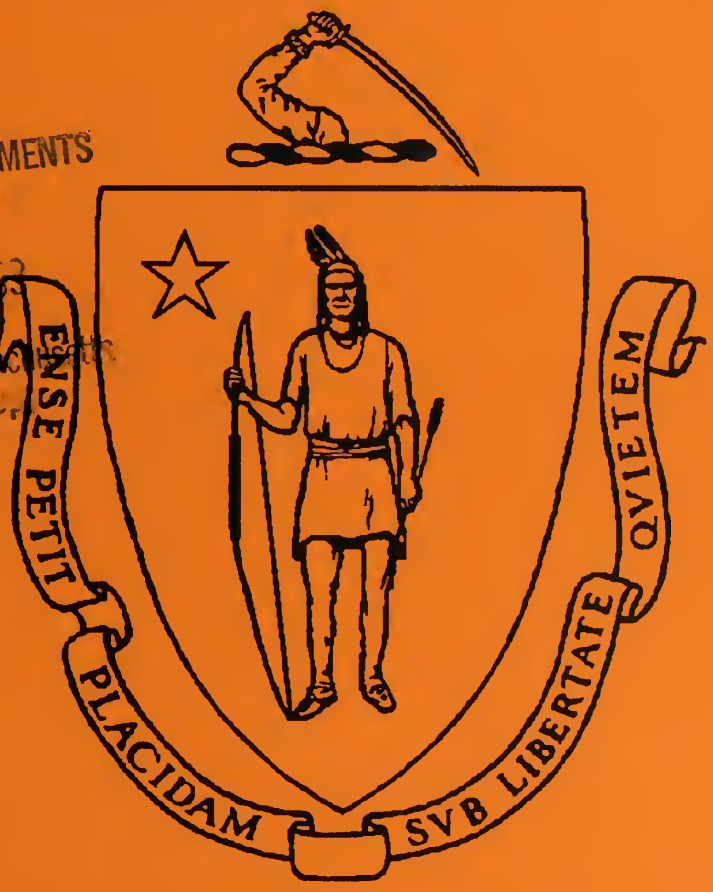

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UNIFORM FINANCIAL STATEMENTS AND INDEPENDENT AUDITOR'S REPORT

AUDITOR'S COMPLIANCE SUPPLEMENT

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Attachments: Audit Risk Assessment Form

Regulations: 808 CMR 1.00
808 CMR 2.00

DPS General Conditions to the Master Agreement

DPS Audit Resolution Policy

DPS Related Party Relationships and Disclosure Requirements under 808 CMR 1.00

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COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

When an independent auditor is engaged to audit the Uniform Financial Statements, the financial audit must be conducted and reported in accordance with Generally Accepted Government Auditing Standards (GAGAS). Government Auditing Standards (commonly referred to as the "Yellow Book") have been promulgated by the Comptroller General of the United States General Accounting Office (GAO). The guidance that follows has been adapted for use in audits of providers contracting with the Commonwealth and excerpted from the "Yellow Book" and the GAO office policy publication, "Assessing Compliance With Applicable Laws and Regulations." GAO's standards require that all audits include an assessment of compliance with relevant laws and regulations that are material to the engagement objectives. For financial statement audits, the standard provides the following:

- A test should be made of compliance with applicable laws and regulations.

- The auditor should design audit steps and procedures to provide reasonable assurance of detecting errors, irregularities, and illegal acts that could have a direct and material effect on the financial statement amounts.

- The auditor should also be aware of the possibilities of illegal acts that could have an indirect and material effect on the financial statements.

The "Yellow Book" also requires that financial audits be performed in accordance with the fieldwork and reporting standards prescribed by the American Institute of Certified Public Accountants (AICPA). AICPA has issued a series of Statements on Auditing Standards (SAS), and the following are particularly applicable to detecting and reporting noncompliance with laws and regulations on financial audits:

- Compliance Auditing Applicable to Government Entities and Other Recipients of Governmental Financial Assistance (SAS 68);

- Consideration of the Internal Control Structure in a Financial Statement Audit (SAS 55);

- Illegal Acts by Clients (SAS 54); and

- The Auditor's Responsibilities to Detect and Report Errors and Irregularities (SAS 53);

- Omnibus Statement on Auditing Standards 1983 (SAS 45) AU Section 334, Related Parties and Au Section 9334 Related Parties: Auditing Interpretations of Section AU 334;

- Audit Risk and Materiality in Conducting an audit (SAS 47).

Audits of providers for Single Audit purposes carry additional requirements that the auditor must be aware of to conduct the audit. These requirements are noted in the Executive Office of The President, Office of Management and Budget publication, OMB Circular A-133 "Audits of Institutions of Higher Education and Other Nonprofit Organizations" and "Compliance Supplement for Single Audits of Institutions of Higher Education and Other Nonprofit Organizations."

General Requirements

Audits must be properly planned and include steps to provide reasonable assurance-**not absolute or complete**-that material instances of noncompliance that directly relate to the engagement's objective(s) are detected and reported. Auditors should not presume the provider is in compliance or not in compliance but should do sufficient testing to provide reasonable assurance that noncompliance, which is individually or in the aggregate material, would have been identified.

Sufficient steps must be performed to detect major noncompliance without spending an unreasonable amount of resources on those steps. Too much audit effort would waste valuable resources needed elsewhere, while not enough work risks instances of material noncompliance going undetected.

The standard does not expect auditors to uncover every impropriety; instead, it requires reasonable tests to assure detection of major noncompliance (errors, fraud, illegal acts, or irregularities) and abuse.

The "Yellow Book" requires auditors to perform audit steps as follows:

1. Determine if engagement objectives require that tests of compliance with laws and regulations be performed;

2. identify laws and regulations that apply to the entity being audited and that are relevant to engagement objectives;

3. assess the risk that noncompliance with these laws and regulations could significantly affect the program operations or financial statements being audited;

4. consider whether internal controls deter or help detect noncompliance;

5. design work steps to reasonably assure the (1) entity's compliance with relevant laws and regulations and (2) detection of errors, irregularities, abuse, or illegal acts that could significantly affect the engagement objectives;

6. exercise appropriate caution in investigating illegal acts so as not to interfere with potential future investigations and/or legal proceedings;

7. promptly prepare an audit report that includes all significant or material instances or noncompliance; and

8. promptly report all illegal acts that could result in criminal prosecution.

Terms Defined

Noncompliance with laws and regulations includes both intentional and unintentional acts as well as a variety of other terms, such as "fraud," "abuse," "errors," and "irregularities," and these and other terms are defined as follows:

Abuse is distinguished from noncompliance in that abusive conditions may not directly violate laws or regulations. Abusive activities may be within the letter of the laws and regulations but violate either their spirit or the more general standards of impartial and ethical behavior. This would include furnishing excessive services to beneficiaries; or performing what may be considered improper practices, none of which involves noncompliance with laws and regulations.

Civil acts - An illegal act for which penalties that do not include incarceration are available for a statutory violation. Penalties may include monetary payments and corrective actions.

Criminal acts - An illegal act for which incarceration, as well as other penalties, is available if the government obtains a guilty verdict.

Errors - Unintentional noncompliance with applicable laws and regulations and/or misstatements or omissions of amounts or disclosures in financial statements.

Fraud - Action that violates a fraud-related statute of the federal or state government.

Illegal acts - Failure to follow requirements of laws or implementing regulations, including intentional and unintentional noncompliance and criminal acts.

Irregularities - Intentional noncompliance with applicable laws and regulations and/or misstatements or omissions of amounts or disclosures in financial statements.

Identifying Laws and Regulations

During the early phase of an engagement, auditors should identify the laws and regulations that apply to the engagement subject area and might significantly affect engagement objectives.

The first step is to identify general laws and regulations applicable to the subject of the engagement. For example, when auditing the provider's Uniform Financial Statements, the laws and regulations associated with the organization's charitable purpose and delivery of social services will apply.

The second step is to identify more specific laws and regulations applicable to the provider's activity. For example, the contract that is executed between the provider and the Commonwealth's purchasing agency is governed by the incorporation of general conditions, procurement regulations and contracting requirements.

The third step is to identify those provisions of laws, regulations and policies relating directly to the engagement objectives. For example, violation of contract provisions or regulations that govern reimbursement for services delivered by the provider could have a material effect on the financial statements.

Sources of information that auditors can use to identify applicable laws and regulations include:

- Federal and State employment and labor laws.
- Internal Revenue Code, Massachusetts Department of Revenue and Division of Employment and Training laws.
- Massachusetts Executive Office for Administration and Finance, Division of Purchased Services General Conditions (Attachment 1 of Master Agreement).
- Code of Massachusetts Regulations (available from State Bookstore).
- Code of Federal Regulations (available from Federal Bookstore).
- State agency contracting requirements (contained in Attachment C of state purchasing agency contracts with the provider).
- Division of Purchased Services Contract Instructions and Forms.
- Commonwealth of Massachusetts Purchase of Service System User Handbook.

Materiality/Significance and Sensitivity

The auditor should consider materiality and/or significance and sensitivity in planning the audit and in selecting the methodology and designing audit tests and procedures, as well as in deciding whether a matter requires disclosure in an audit report.

Materiality concerns the magnitude of omissions or misstatements of accounting information that, in the light of circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by omissions or misstatements. Materiality judgments involve both quantitative and qualitative considerations. One of the criteria to be considered in determining materiality includes the monetary value of the item. Qualitative factors include, but are not limited to, the cumulative effect and impact of immaterial items, the objectives of the work undertaken, and the use of the reported information by the users or groups of users of the information.

Significance concerns the importance, in relation to the audit objectives, of items, events, information, matters or problems the auditor identifies.

Sensitivity involves how given matters will be perceived by others. It is possible for matters to be both material/significant and sensitive. For example, a former high-level state official used influence to convince a state agency to fund a program operated by a provider, and for minimal effort the former official was paid a large fee by the provider.

In determining materiality and/or significance, sensitivity and audit risk, the auditor is expected to consider the following:

a. Amount of revenues and expenditures.

b. Newness of the activity or changes in its condition.

c. Adequacy of internal controls.

d. Results of prior audits.

e. Level and extent of review or other form of independent oversight.

f. Adequacy of the internal controls for ensuring compliance with laws and regulations.

g. Management's adherence to applicable laws and regulations.

h. Audit report users' expectations.

i. Public perceptions and political sensitivity of the areas under audit.

j. Audit requirements.

In government audits the materiality level and/or threshold of acceptable risk may be lower than in similar-type audits in the private sector because of the public accountability of the entity, various legal and regulatory requirements, and the visibility and sensitivity of government-supported programs, activities, and functions.

Generally, the greater the materiality/significance and sensitivity, the greater the degree of required compliance testing.

Determining the Extent of Compliance Testing

Compliance testing should provide reasonable assurance of detecting errors, irregularities, and illegal acts that could have a direct and indirect material effect on program operations and the financial statement amounts. This is accomplished by first determining what to test and the degree of testing that is needed. Determining what and how much to test is achieved by completing the previously noted steps, two through five, in the General Requirements section.

These steps and procedures rely upon the professional judgment of the auditor to determine what to test and the degree of testing needed, rather than a series of predetermined audit tests.

Vulnerability Assessment

After laws and regulations that apply to the audited entity have been identified, auditors must assess the risk that noncompliance with these laws and regulations could significantly affect the program operations or financial statements being audited. Once the risk has been determined, the extent of compliance testing to be performed can be established. This is attained by conducting a vulnerability assessment. A vulnerability assessment determines the probability that noncompliance and abuse, which is individually or in aggregate material, could occur and not be prevented or detected in a timely manner by internal controls. The assessment evaluates (1) the inherent risk of a law or regulation to noncompliance and abuse before considering internal controls and (2) whether internal controls will prevent or detect noncompliance and abuse (see table below).

Relationships Between Inherent Risk, Internal Controls, Vulnerability, and Testing Extent

Inherent risk	x	Internal controls	=	Vulnerability/testing extent
High		Weak		High
		Adequate		Moderate to high
		Strong		Low to moderate
Moderate		Weak		Moderate to high
		Adequate		Moderate
		Strong		Low
Low		Weak		Low to moderate
		Adequate		Low
		Strong		Very low

The extent of compliance testing is directly related to a provider's degree of vulnerability. The higher the vulnerability, the more extensive the compliance testing needs to be and vice versa. Thus, even though a provider may be inherently risky to noncompliance and abuse, strong internal controls can reduce vulnerability to a relatively low level, thereby reducing necessary compliance testing to a relatively low level.

The rationale for performing a vulnerability assessment is that auditors can limit testing and focus on those areas most vulnerable to noncompliance and abuse if internal controls are found to be adequately designed and reliable. This produces a more cost-effective and timely audit.

A. Inherent Risk

Inherent risk is the probability that a law/regulation related to the audit (including the provider's program operations and financial statements) will not be complied with, or that the area being reviewed is highly susceptible to noncompliance (e.g., pilferage of cash).

Inherent risk is assessed before considering whether the internal controls would prevent or detect such noncompliance or abuse. Assessing inherent risk involves:

- Considering the requirements of applicable laws and regulations;
- establishing susceptibility to noncompliance;
- assessing management's commitment to reduce and control noncompliance;
- determining whether previously identified noncompliance problems have been corrected; and
- testing transactions.

1. Considering Requirements of Laws and Regulations

The Identifying Laws and Regulations' section of this document discusses how to identify the laws and regulations applicable to the engagement. Some questions to consider are as follows:

- Are the laws and regulations readily identifiable, vague, complex, or contradictory?

  Laws and regulations that are clear, understandable and consistent with other laws and regulations are easier to adhere to and to check compliance than laws and regulations lacking these characteristics.

- Do the laws and regulations relate to a new program, or have they undergone recent or frequent major changes or have they not been enforced?

  Laws and regulations that have recently been implemented or changed or that have not been enforced may be more likely to be violated because people are less familiar with them.

2. Susceptibility to Noncompliance

Auditors should also identify the characteristics that increase the susceptibility to noncompliance. Some questions to consider are as follows:

- Do incentives of noncompliance outweigh the potential penalties?

  If the law or regulation provides a benefit based on need, individuals will have an incentive to overstate their need in order to qualify or to get a larger benefit.

- Is it practicable or reasonable to expect compliance, or are the laws and regulations so burdensome or onerous that noncompliance could reasonably be expected?

- Does the entity have numerous transactions?

  The more transactions there are, the greater the chances that noncompliance could occur due to errors, irregularities, and abuse. Also, a large number of transactions increases the difficulty of detecting noncompliance.

- Have important government-supported activities and programs (e.g., payroll service or client services) been contracted out or delegated to those outside the provider without ensuring that adequate internal control systems and active monitoring/oversight are in place?

- Does the provider have a significant amount of assets that are readily marketable (i.e., cash, securities, or drugs) or could be used for personal purposes (i.e., tools, cars, auto repair parts, or computers)?

  Such assets are very susceptible to improper use or theft.

- Are significant benefits of government-supported programs extended to individuals or corporations by provider officials whose actions are generally not subject to public examinations and evaluations?

Auditors should be alert for and consider any "red flags" or indicators of susceptibility to noncompliance. Any such indicators would vary depending upon the organizational structure or type of services the provider delivers. The following are examples of susceptibility indicators that might be identified:

- A pattern of certain providers bidding against each other or, conversely, certain providers not bidding against each other;
- use of government-supported fixed assets and materials on activities that are unrelated to program services;
- a high rate of fines and penalty assessments from taxing authorities;
- complex transactions;
- poor records/documentation;
- activities that are dominated and controlled by a single person or small group without adequate review and oversight;
- unreasonable explanations to inquiries by auditors;
- auditee's annoyance at reasonable questions by auditors;
- employees' refusal to give others custody of records;
- employees' refusal to take vacations and/or accept promotions; and
- extravagant life-style of employees.

3. Management Commitment

Auditors should consider management's commitment to reduce and control noncompliance. A strong commitment by management to comply is a positive factor in reducing the risk of noncompliance. Some questions to consider are as follows:

- Have problems been repeatedly disclosed in prior audits by your firm or other auditors?
- Does management promptly respond when problems are first identified?
- Are recurring complaints and allegations received by state agencies from the general public or state employees?

- Is management willing to discuss its approach toward compliance?

- Is management knowledgeable of the subject area and potential problems?

- Does management have a constructive attitude, including a willingness to consider innovative approaches?

- Is there a stable management team with continuity and a good reputation, or is there high turnover and/or poor management reputation?

4. Testing Transactions

The final step of assessing inherent risk involves testing a limited number of transactions. This testing usually occurs during the stage of an engagement when information is gathered without verification for use in planning the audit (survey stage of government audits). This stage of the engagement is not intended to be a representative sample of transactions. Rather, the auditor should perform limited work to gain a better understanding of the processes followed by the provider and to confirm other observations made about inherent risk of noncompliance.

B. Internal Controls

Internal controls consist of policies and procedures used to provide reasonable assurance that goals and objectives are met; resources are adequately safeguarded, efficiently utilized, and reliably accounted for; and laws and regulations are complied with.

Evaluating internal controls involves:

- Identifying internal control objectives (policies) that management has designed to ensure that laws and regulations are complied with and the control environment;

- identifying key internal control techniques (procedures) that management has established to achieve objectives;

- testing control procedures; and

- identifying needed follow-on actions.

In some instances, auditors may be able to make this evaluation on the basis of recently completed audits or evaluations.

1. Identifying Objectives

The control objective is a positive thing that management tries to attain or an adverse condition or negative effect that management is seeking to avoid. For example, the provider has a control objective of not billing the Commonwealth for services to clients who are ineligible for benefits. Auditors should determine what control objectives related to assignment objectives management has established.

The control environment reflects the overall attitude toward and awareness of management regarding the importance of internal controls. A good control environment is a positive factor in establishing and enhancing the effectiveness of specific policies and procedures, while a poor control environment has the opposite effect. Factors affecting the control environment include:

- Management's philosophy and operating style (tone at the top);
- the entity's organizational structure;
- methods of delegating authority and responsibility;
- management's methods for monitoring and following up on performance, including internal assessments and corrective action taken on recommendations; and
- personnel policies and practices.

2. Identifying Procedures

Control objectives and environment represent those goals and actions management wishes to achieve, while control procedures are the specific steps designed and prescribed by management to provide reasonable assurance that its control objectives will be achieved. For example, to limit spending to the amounts negotiated with the Commonwealth in program budgets, provider organizations have implemented detailed procedures for controlling expenditures. The control objective is to limit spending to the amount negotiated, and the control procedures are those steps that must be performed before funds can be obligated and/or spent. These steps may include such actions as requiring certification by the accounting department that sufficient funds are available in the budget before obligating or expending funds.

The auditor can obtain information on the control environment, objectives, and procedures by reading provider accounting and procedures manuals, reviewing past audit reports and evaluations, interviewing management and employees, and making observations.

Because of inherent limitations in the design and the operations of any internal control system, auditors should not expect internal controls to prevent or detect all instances of noncompliance or abuse. The most pervasive limitations are that the cost of internal controls should not exceed their benefits. In deciding how extensive the system of internal controls should be, management compares the costs of more controls with the benefits to be gained.

Other limitations include the possibility that management may override the internal control system; employees may secretly be working together (collusion) to avoid or circumvent the controls; and employees may not be correctly applying the control technique due to fatigue, boredom, inattention, lack of knowledge, or misunderstanding. As a result, auditors should always test actual transactions to have a reasonable basis for evaluating internal controls.

The auditors' understanding of the internal control system should be documented in the workpapers. This can be done through flowcharts; narratives; questionnaire responses, records of interviews, and copies of policies and procedures, documents, and records.

3. Testing Control Procedures

For internal control procedures to be effective, they must be designed to achieve the intended objective(s) and must be correctly and consistently applied by the authorized employee(s). The best designed internal controls are of little value if the procedures are not correctly followed. For example, if the entity has a procedure requiring the manager's approval for all purchases over a specified dollar amount, but the manager does not review the purchase orders, this procedure will not be very effective in preventing or detecting unnecessary purchases.

Testing internal controls consists of the following steps:

- defining what constitutes effective internal controls;
- selecting a small sample of transactions, either randomly or nonrandomly;
- evaluating whether the sample transactions were executed in accordance with the laws and regulations and internal controls;
- documenting the evaluation results; and
- determining the probability that noncompliance will not be detected or prevented by the internal controls.

Auditors can use the results of the transaction tests to assess the probability that internal controls will not prevent or detect noncompliance.

4. Needed Corrective Actions

If testing reveals material noncompliance or abuse, the auditor should determine what internal controls were intended to prevent, or detect the noncompliance or abuse and ascertain the reasons they did not. If internal controls are weak or nonexistent, many more transactions may be in noncompliance. Auditors should consider expanding tests to determine the impact of weaknesses on engagement objectives and of doing follow-on work.

* * * * *

Auditors should consult the fieldwork and reporting standards for internal controls in financial audits as discussed in the GAO's "Yellow Book."

A sample Audit Risk Assessment Form has been provided as an attachment to this document. Government auditors often use a combination of tools, including forms for documenting and assisting in assessing risk components that estimate the possibility of error and irregularities in account balance, classes of transactions or procedures. The attached form has been designed to be used in conjunction with the guidance provided in pages 6 through 17 of this document for determining materiality and/or significance and audit risk, which govern the level of testing required or the inclusion of a potential finding in the report.

Reporting Requirements

GAO's government auditing standards require the following:

The auditors should prepare a written report on their tests of compliance with applicable laws and regulations. This report, which may be included in either the report on the financial audit or in a separate report, should contain a statement of positive assurance on those items which were tested for compliance and negative assurance on those items not tested. It should include all material instances of noncompliance and all instances or indications of illegal acts which could result in criminal prosecutions.

If auditors find no instances or indications of material noncompliance, the compliance report must include:

- A statement of positive assurance that the test results indicate that with respect to the items tested, the entity complied in all material respects with the laws and regulations referred to in the scope; and

- a statement of negative assurance that with respect to items not tested, nothing came to the auditors' attention that caused them to believe that the entity had not complied in all material respects with these laws and regulations.

If auditors find instances of material noncompliance, they should state that they considered these instances in forming their opinion on the financial statements and whether these instances affected their opinion and how. The statement on assurance should be similar to the following:

> **"Except as described above, the results of our tests of compliance with laws and regulations indicate that with respect to the items tested, the provider complied in all material respects with the provisions referred to above. With respect to items not tested, nothing came to our attention that caused us to believe that the provider had not complied in all material respects with those same provisions."**

Instances of noncompliance with laws and regulations that are nonmaterial from a quantitative and qualitative perspective must be reported to top management of the provider via a management letter. If applicable, the compliance report should state that the auditors found instances of nonmaterial noncompliance with laws and regulations that are being separately reported to management.

In all cases, instances of noncompliance with laws and regulations should be reported by identifying:

- the condition of noncompliance;
- the effect of noncompliance in monetary and/or qualitative terms, if it can be determined;
- the criteria by which noncompliance was established;
- the cause of noncompliance, if it can be determined;
- recommendations for eliminating the noncompliance, if they can be developed.

Material findings of noncompliance should also be presented in their proper perspective:

- the size of the universe in number of items and dollars;
- the number and dollar amount of transactions tested by the auditors;
- the number of corresponding dollar amount of instances of noncompliance.

Further information on compliance reports can be found in chapter 5 of the "Yellow Book" and Statement on Auditing Standards 63, issued by the American Institute of Certified Public Accountants; Compliance Auditing Applicable to Government Entities and Other Recipients of Governmental Financial Assistance. In addition, provider audit reports that are subject to the requirements of OMB Circular A-133 must include a written report on compliance with laws and regulations that have a direct and material effect on each major federal program.

Audits of providers for the purpose of Single Audit carry additional requirements that the auditor must be aware of to conduct the audit. These requirements are noted in the Executive Office of The President, Office of Management and Budget's publications, OMB A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations, paragraph 12. "Scope of Audit and Audit Objectives" and Compliance Supplement for Single Audits of Institutions of Higher Education and Other Nonprofit Organizations.

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Auditors should consult the reporting standards for compliance in financial audits as discussed in the GAO's "Yellow Book."

A sample Audit Risk Assessment Form has been provided as an attachment to this document. Government auditors often use a combination of tools, including forms for documenting and assisting in assessing risk components that estimate the possibility of error and irregularities in account balance, classes of transactions or procedures. The attached form has been designed to be used in conjunction with the guidance provided in pages 6 through 17 of this document for determining materiality and/or significance and audit risk, which govern the level of testing required or the inclusion of a potential finding in the report.

Suggested Areas of Compliance Testing

The majority of program services purchased by the Commonwealth are reimbursed through negotiated unit rate prices that have been negotiated within the market price ranges established in the Component Price Catalog. Programs of social service purchased by the Commonwealth through the negotiated unit rate price mechanism deliver a program of discrete services which have performance and productivity requirements.

Other unit rate payments are commonly and mistakenly identified as negotiated unit rate reimbursements. These payments are usually for medicaid eligible services or for the delivery of goods and services such as pharmaceuticals, x-rays, accounting or temporary employment services rather than a program of social services. The organization, which is usually classified as a vendor, is being payed for the delivery of goods or units of service and is responsible for cost overruns.

The negotiated unit rate mechanism utilizes a formula to establish a fixed price (maximum obligation) for a program of discrete services that is paid on a unit-of-service basis. Funding levels for these programs are established by considering the need for allowable program costs and performance and productivity levels. Programs that receive funding in this manner are often referred to as performance-funded programs. The formula reimburses the providers for social services and market based program costs previously identified in a negotiated program budget. Negotiated program budgets may be changed by amending the contract. Conditions for amendment of the contract include:

- Operating costs change because statutory and regulatory modifications cause funding decreases and increases;
- type and quantity of services are modified because of change in statute or regulation;
- a change in the amount or availability of off-setting income from other sources of funding;
- client's safety and well-being is gravely threatened because program costs increase beyond the control of the provider;
- reimbursable costs become greater or less than negotiated amount; and
- changes in expected client utilization; and
- program reconfiguration occurs during the life of the contract.

The negotiated unit rate system that utilizes the market price ranges established in the Component Price Catalog for negotiation purposes accomplishes the following:

- Eliminates program costs that are not needed or should not be reimbursed with public funds;
- accommodates program reconfiguration or other changes through contract amendment;
- provides for adequate cash flow by permitting the retention of five percent of excess program revenues generated by good management practices and;
- removes provider responsibility for cost overruns.

The provider's contract with the Commonwealth for the delivery of a program of social services has minimum and mandatory program requirements. The contract also includes specific and measurable criteria and standards for evaluating the provider's productivity and performance in relation to desired individual client outcomes or overall program objectives. The contract mandates that the organization reports and meets these performance and productivity requirements and complies with applicable laws, nonreimbursable cost requirements and other regulatory requirements. Productivity and performance measurements are the primary standards used in performance-funded programs to determine if the provider has fulfilled its contractual obligations.

The cost reimbursement pricing mechanism is also utilized for the purchase of social services by the Commonwealth. The cost reimbursement pricing structure reflects a purchase arrangement in which the purchasing agency pays the provider for budgeted costs that are actually incurred in delivering the services specified in the contract, up to a stated maximum obligation. In cost reimbursement situations, any budgeted cost that is not actually incurred, including the allocation of administration, can neither be billed by the provider nor reimbursed by the purchasing agency. All excess revenues that are generated as a result of budgeted costs not being incurred by the provider but reimbursed by the purchasing agency must be passed on to the Commonwealth.

Regulations and contract General Conditions that govern the establishment and administration of rates of payment and contracts are attached to this document.

For performance-funded unit rate programs, the auditor's examination should be directed to areas that could, by virtue of noncompliance with laws and regulations and disallowance, have a direct and material effect on the financial statement amounts. The auditor should obtain an understanding of management's

responsibilities concerning the contractual requirements established in the general conditions of its Master Agreement with the Commonwealth and the nonreimbursable cost provisions of 808 CMR 1.00 (Section 3.15). The Division of Purchased Services will determine the annual excess revenues generated through performance-funded unit rate programs pursuant to the provisions of 808 CMR 1.19 (3) Not-for-Profit Provider Surplus Revenue Retention. Given this fact, the auditor's examination should not be directed to this area for compliance with the revenue retention provisions of 808 CMR 1.19 (3).

Each compliance requirement below is generally considered to be inherently risky and highly susceptible to noncompliance. Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements are also included. The auditor should consider these areas when performing the vulnerability assessment for determining the extent of compliance testing needed. The need or extent of compliance testing in these areas has not been mandated but instead is directly related to the provider's degree of vulnerability.

The **suggested** audit procedures associated with the compliance requirements below are intended to be illustrative, **not** comprehensive or mandatory. The design of appropriate audit tests should be based upon the auditor's professional judgment.

Allocation of Costs

Compliance Requirement: Provider organizations must maintain financial books and records which distinguish the direct expenses of each program receiving Commonwealth funds and which make a reasonable allocation of the organization's indirect expenses (costs which pertain to various functions) to such programs. Indirect expenses that are not related to direct services such as management and general/administration and certain administrative expenses should normally not be allocated to various functions on the basic financial statements.

Source: "General Conditions," Article VII, A. 1. (a), Provider Financial Records.

Suggested Audit Procedures:

- Review the chart of accounts and books of original entry to determine if they distinguish and segregate the income and direct expenses associated with programs funded by the Commonwealth.

- Determine whether the provider has written cost allocation policies and plans.

- Review indirect cost allocation policies, plans, worksheets, etc., to determine if allocations are reasonable and in accordance with recommendations of the AICPA "Industry Audit Guide for Audits of Voluntary Health and Welfare Organizations" for "Allocation of Costs Which Pertain to Various Functions" and SOP 78-10 par. 100.

Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements:

Incorrect interpretation of the AICPA recommendations for allocation of costs which pertain to various functions or recording and reporting through error; or

committing irregularities, such as the intentional allocation of administrative costs for the overall direction of the organization to program or fund-raising functions, in an effort to portray the provider (for the benefit of contributors, financial lending institutions and governmental jurisdictions) as having minimal administrative expenditures; or

allocation of administrative costs to programs receiving funding from the Commonwealth in a fraudulent or illegal manner for the purposes of increasing reported reimbursable program costs used to support billings and formulas for reimbursement which could result in a disallowance,

debarment and legal action. These actions would result in a direct and material effect on the financial statement amounts, including a misstatement of administrative, program and fund-raising functions on the Statement of Functional Expenses and a liability to the Commonwealth on the Balance Sheet.

The AICPA recommendations prohibit allocation of administrative (management and general) costs for the overall direction of the organization to program and fund-raising functions. The portion of time spent directly supervising program, fund-raising or service activities, such as salaries and expenses, should be prorated among those functions. Administrative costs for the overall direction of the organization, including general record maintenance, general board activities, and salaries and expenses of the chief officer of the organization and/or his staff, could be incorrectly allocated to program and fund-raising functions, as noted above.

Allowable Services

Compliance Requirement: The provider organization must ensure that the amounts reported as program expenditures for programs funded by the Commonwealth were for allowable services as defined in the provider's standard service contract or agreement with the Commonwealth.

Source: Standard Service Contract, Attachment A: Section I: Program Narrative; Section II: Goals and Objectives; and Section VIII: Resources or agreement narrative.

Suggested Audit Procedures:

- Review provider program descriptions and interview staff to determine if the services delivered are consistent with the allowable services defined in the standard service contract.

- If the use of fixed assets are an integral part of the program, determine by observation that the resources are available and being utilized.

Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements:

Incorrect interpretation of allowable service criteria or recording and reporting through error; or

committing irregularities, such as intentionally reporting or billing for services that are not allowed, in an effort to provide services other than those covered in the contract and\or portraying the provider as having fulfilled all of its contract service delivery obligations; or

fraudulent or illegal reporting and billing for services that have not been provided in accordance with the terms and conditions of the contract with the Commonwealth could result in disallowance, debarment and legal action. These actions would have a direct and material effect on the financial statement amounts, including a misstatement of program functions on the Statement of Functional Expenses and a liability to the Commonwealth on the Balance Sheet.

Eligible Clients

Compliance Requirement: The provider organization must ensure that the amounts reported as program expenditures for programs funded by the Commonwealth were for eligible clients as defined in the provider's standard service contract or agreement with the Commonwealth.

Source: Standard Service Contract, Attachment A: Section II: Client Profile; Section V: Operations, Section VI: Administration or Agreement Narrative.

Suggested Audit Procedures:

- Review provider admission and client eligibility determination procedures and determine if program services are being delivered to eligible clients in accordance with the client profile, admission and financial eligibility criteria of the standard service contract or agreement.

Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements:

Incorrect interpretation of client eligibility criteria or recording and reporting through error; or

committing irregularities such as intentionally reporting or billing for ineligible clients in an effort to provide services to individuals not meeting contract eligibility criteria and\or portraying the provider as having fulfilled its service delivery obligations to eligible clients of the contract; or

fraudulent or illegal reporting and billing for services provided to clients who do not meet client contract eligibility criteria could result in a disallowance, debarment and legal action. These actions would have a direct and material effect on the financial statement amounts, including a liability to the Commonwealth on the Balance Sheet.

Performance and Service Documentation

Compliance Requirement: The provider organization must ensure that amounts reported as program income and expenditures for programs funded by the Commonwealth were supported by a system that measures performance and establishes targets to be achieved. Provider organizations must maintain a system of documenting client attendance, client encounters or services delivered which:

- identifies individual consumers/clients with the services each has received;
- identifies, by program, all service units actually rendered or delivered;
- identifies whether and to whom services were billed; and
- identifies and measures outcomes achieved.

Source: Standard Service Contract, Attachment A: Section VII: Program Assessment; Attachment B: Fiscal Conditions or agreement narrative. "General Conditions," Article V, B. Client Records, (2) Maintenance.

Suggested Audit Procedures:

- Review provider performance monitoring system to determine if it accurately measures performance outcomes and units of service rendered in relation to targets to be achieved in accordance with program performance and utilization criteria of the standard service contract or agreement.

- Ascertain whether the provider maintains a system which documents, as appropriate, client attendance, client encounters, outcomes achieved or services delivered.

- Review the system and records to determine if they satisfy the above criteria.

- Selectively sample and trace invoices to the Commonwealth for services rendered to supporting documentation (service delivery records).

- Selectively sample client performance reports to outcome measurement supporting documentation.

Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements:

Incorrect interpretation of performance and service documentation requirements or recording and reporting through error; or

committing irregularities, such as intentionally reporting or billing for services not supported by accurate performance and service delivery documentation for measuring outcomes and units of service delivered, in an effort to provide services to ineligible individuals and\or to embellish service delivery outcomes and client utilization or to portray the provider as having fulfilled these requirements; or

fraudulent or illegal reporting or billing for services in accordance with performance and service delivery requirements of the contract or for services that have not been provided could result in disallowance, debarment and legal action. These actions would have a direct and material effect on the financial statement amounts, including a liability to the Commonwealth on the Balance Sheet.

Provider organizations that are reimbursed for a program of social services through the negotiated unit rate mechanism, which utilizes a formula to establish a fixed price (maximum obligation), are paid on a unit of service basis. The contracts for these programs have minimum or mandatory program requirements and specific and measurable criteria and standards for evaluating the provider's productivity and performance. Productivity and performance measurements are the primary standards used in performance-funded programs to determine if the provider has fulfilled its contractual obligations.

Program FTE Documentation

Compliance Requirement: Provider organizations must maintain a system of documenting each full- and part-time employee's attendance, hours worked, program assignments and payroll expenses to enable the organization to prepare an accurate schedule of full-time equivalent employees and associated payroll expenses by job category and program.

Source: "General Conditions," Article VI, C. Personnel Policies (2) Record Keeping.

Suggested Audit Procedures:

- o Ascertain whether the provider maintains a system of documenting employees' time and attendance, payroll expenses and program assignments.

- o Review the system's records to determine whether they identify:

  - individual employee's total time and attendance;
  - individual employee's job category;
  - individual employee's program assignments or, in the case of employees assigned to work in more than one program, the proportion of time devoted to each; and
  - individual employee's payroll expenses.

- o Selectively test and trace "Employee Compensation" reported on the Statement of Functional Expenses to supporting documentation (time sheets, attendance records, etc.).

Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements:

Absence of a system for documenting employee's time and attendance, payroll expense and program assignments or the incorrect interpretation of its maintenance requirements could increase the risk of recording and reporting through error; or

committing irregularities, such as intentionally reporting or billing for services not supported by accurate documentation for supporting employee's time and attendance, payroll expense and program assignments, in an effort to provide services with less or different employee staffing than what is required in the contract or to embellishing staffing assignments and employee-related expenses or portraying the provider as having fulfilled licensing requirements; or

fraudulent or illegal reporting or billing for services not in accordance with staffing, related employee expenses and licensing requirements of the contract could result in disallowance, debarment and legal action. These actions would have a direct and material effect on the financial statement amounts, including a liability to the Commonwealth on the Balance Sheet.

Client Custodian Funds

Compliance Requirement: A provider organization which serves as a client's representative payee for SSI purposes, which, as a fiduciary, holds and manages the personal funds of clients specifically identified, referred or deemed eligible for the program by the Commonwealth under a contract or agreement, must do so in accordance with the guidelines of applicable Commonwealth of Massachusetts purchasing agencies.

Source: Commonwealth Purchasing Agency Regulations and Policies

Suggested Audit Procedure:

- Determine (client representation) whether the provider acts as a representative payee or otherwise acts as a fiduciary with respect to client personal funds.
- Determine whether the appropriate Commonwealth of Massachusetts agency has promulgated rules, regulations or policies governing the provider's fiduciary duties with respect to client funds by inquiry to the provider's contact officer for that agency.
- Obtain an understanding of the requirements of said rules, regulations, etc.
- Selectively sample and test transactions to determine whether the material provisions of said rules, regulations, etc., have been followed.

Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements:

Incorrect interpretation of client custodian fund record maintenance requirements or recording and reporting through error; or

committing irregularities, such as intentionally recording or reporting client custodian funds in a manner not in accordance with established accounting principles, purchasing agency policies, regulations or legal requirements, in an effort to use these funds for unauthorized purposes or to portray the provider as having fulfilled custodial responsibilities; or

fraudulent or illegal reporting and use, including defalcation of client custodial funds, could result in debarment and legal action. These actions would have a direct and material effect on the financial statement amounts, including a misstatement of custodian funds or a liability to clients on the Balance Sheet.

Provider Reimbursements/Stipends

Compliance Requirement: Provider organizations which operate family day-care or foster-care programs funded by a Commonwealth contract or agreement must pay third-party, family day-care or foster-care providers at the rate established by the Commonwealth. The third-party payments must be the same as the provider's reimbursement/stipend expenses.

Source: Commonwealth Purchasing Agency Policies

Suggested Audit Procedure:

- Determine whether the provider organization operates family day-care, foster-care, or other programs in which third-party providers are required to be reimbursed at rates established by the Commonwealth.

- Reconcile total provider reimbursement/stipend expenses and report any differences.

Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements:

Incorrect interpretation of provider reimbursements and stipend payment (pass through) and record maintenance requirements or recording and reporting through error; or

committing irregularities, such as intentionally recording or reporting payments to third-party providers not in accordance with established purchasing agency policies, in a effort to use these funds for unauthorized purposes or to portray the provider as having fulfilled financial management responsibilities; or

fraudulent or illegal reporting and use, including defalcation of third-party reimbursements or stipends, could result in disallowance, debarment and legal action. These actions would have a direct and material effect on the financial statement amounts, including a misstatement of custodian funds or a liability to the third party and the Commonwealth on the Balance Sheet.

Assets Held in Trust for the Commonwealth

Compliance Requirement: Title to all furnishings, equipment and other assets furnished to the provider organization by the Commonwealth or wholly purchased with funds received from the Commonwealth pursuant to a contract or agreement vests in the Commonwealth. The provider organization must maintain a written inventory of all such property, including a description and location of each item.

Source: "General Conditions," Article IV, Contract Administration D. Furnishings and Equipment and Article VIII, Contract Audit A. Maintenance of Records (2) Inventory.

Suggested Audit Procedure:

- Determine (client representation with respect to assets acquired in prior years and review of current year contracts and agreements) whether the provider has possession of any assets furnished by the Commonwealth or wholly purchased with funds received pursuant to a contract or agreement.

- Determine whether the provider maintains asset records which identify and account for such furnishings and equipment.

- Selectively sample and test the records maintained and inventories performed for the following requirements:

  - Written Inventory of all such property;
  - Description of each item; and
  - Location of each item.

Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements:

Incorrect interpretation of free use of facilities and other asset record maintenance requirements or recording and reporting through error; or

committing irregularities, such as intentionally recording or reporting free use of assets not in accordance with established accounting principles, purchasing agency policies, regulations or legal requirements, in an effort to portray the provider as having the use or ownership of more or less assets than it actually has or to represent that all custodial responsibilities have been fulfilled; or

fraudulent or illegal reporting and use, including defalcation of commonwealth assets, could result in debarment and legal action. These actions would have a direct and material effect on the financial statement amounts, including a misstatement or a liability to the Commonwealth on the Balance Sheet.

Disclosure of Nonreimbursable Costs

Compliance Requirement: Provider organizations are required to disclose the existence and value of all anticipated nonreimbursable costs, as identified in 808 CMR 1.15 (1) - (22), and identify the offsetting revenue used to defray the nonreimbursable costs in program budgets of contracts with purchasing agencies of the Commonwealth. All incurred nonreimbursable costs and their value must be reported in Supplemental Schedule B Expenses of the Uniform Financial Statements and Independent Auditors Report (UFR) as either a state or federal nonreimbursable cost.

Source: Regulation 808 CMR 1.15 Non-Reimbursable Costs and Contract Instructions and Forms issued by the Division of Purchased Services pursuant to regulation 808 CMR 2.07(1) - (6).

Suggested Audit Procedure:

- Review and become familiar with the twenty two (22) nonreimbursable cost provisions of 808 CMR 1.15. These provisions also include by reference the federal cost principles of OMB Circular A-122 and A-21 as appropriate when the provider directly or indirectly receives federal assistance.

- Determine (provider representation with respect to nonreimbursable costs in prior years and review of current year contract program budgets) whether the provider has anticipated the existence of any nonreimbursable costs.

- Determine whether the provider maintains records as part of its internal control structure which identifies and accounts for nonreimbursable costs.

- Review the records maintained for the following requirements:

  - Written definition of nonreimbursable costs;
  - Description of each anticipated and incurred nonreimbursable cost; and
  - Identification of fund, program and dollar value related to each nonreimbursable cost.

- Selectively sample and test the expense records to determine that nonreimbursable costs were properly classified, valued and posted in the accounting records and disclosed in the provider's current year contract program budgets and UFR.

- Determine that unrestricted revenues and revenues restricted by donors for use in defraying nonreimbursable costs were available and accurately reported in the UFR as being used to offset (defray) all nonreimbursable costs in programs that the Commonwealth purchases services.

Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements:

Incorrect interpretation of the definition and disclosure requirements of nonreimbursable costs and other requirements or recording and reporting through error; or

committing irregularities, such as intentionally recording or reporting nonreimbursable costs not in accordance with established accounting principles, purchasing agency policies, regulations or legal requirements, in an effort to portray the provider as having less nonreimbursable costs than it actually has or to represent that all disclosure responsibilities have been fulfilled; or

fraudulent or illegal reporting and use, including defalcation of commonwealth funds, could result in debarment and legal action. These actions would have a direct and material effect on the financial statement amounts, including a misstatement or a liability to the Commonwealth on the Balance Sheet.

Related Party Disclosure

Compliance Requirement: Provider organizations are required to disclose the existence and nonreimbursable value of all anticipated related party transactions (related party is defined in 808 CMR 1.02) in program budgets of contracts with purchasing agencies of the Commonwealth. The nonreimbursable value of all incurred related party transactions must be disclosed in Supplemental Schedule B Expenses of the UFR. In addition, all related party relationships must be disclosed in the Notes to the Financial Statements of the UFR.

Source: Regulation 808 CMR 1.04 Filing and Reporting Requirements, regulatory standards and instructions of the UFR and Contract Instructions and Forms issued by the Division of Purchased Services pursuant to regulation 808 CMR 2.07(1) - (6).

Suggested Audit Procedure:

- Review and become familiar with the definition of a related party as defined in 808 CMR 1.02 and Financial Accounting Standards No. 57 (SFAS No. 57), incorporated by reference, and disclosure requirements. In addition, the auditor should review the informational publication entitled Related Party Relationships and Disclosure Under 808 CMR 1.02 issued in December 1992 by the Division of Purchased of Services (Document Number DPS-A032). The auditor should also become fully acquainted with the requirements and recommendations as codified in the AICPA Professional Standards, Statement on Auditing Standards No.45 (SAS No. 45) and Auditing Interpretations of Section Au 334 (Au Section 9334) and the Generally Accepted Government Auditing Standards (GAGAS) definition of material.

- Determine (provider representation with respect to related party relationships and transactions in prior years and review of current year contract program budgets) whether the provider has anticipated the existence of any related party relationships.

- The auditor should consider and obtain representations from the provider's senior management and its board of directors as to whether they or any other related parties engaged in any transactions with the provider during the period, as recommended in Au Section 9334.

- Determine the existence of related party relationships and transactions by utilizing and applying the accounting considerations audit procedures prescribed by SAS 45 and Au Section 9334 to the provider's activities.

- Determine that the provider has disclosed all material related party relationships and transactions as the following requires:

  In government audits and in the Purchase of Service System, the materiality level and threshold for related party disclosure is lower than in similar-type audits in the private sector because of public accountability of the entity, the various legal and regulatory requirements, and the visibility and sensitivity of government programs, activities, and functions. All related party relationships or transactions, as defined by 808 CMR 1.02 and SFAS No. 57, that are associated with programs that are purchased by the Commonwealth are considered material and must be disclosed in current year program budgets and the UFR.

  All related party transactions in programs that are not purchased by the Commonwealth that could affect the providers financial statements and all instances of common ownership or management control relationships for which 808 CMR 1.02 and SFAS No. 57 requires disclosure even though there are no transactions should be considered material in accordance with the criteria established in the third general standard for government auditing of GAGAS and must be disclosed in the UFR.

- Determine that the provider has disclosed the following information for all material (GAGAS definition of material) related party relationships and transactions:

  a. Nature of related party relationship;

  b. The receivables or payables associated with related party transactions for each period the balance sheet or program budget is presented, and, if not clearly determinable, the conditions and methods of settlement;

  c. For each period that an income statement or program budget is presented, the following is required:

     (1) A description of transactions and other necessary information needed for an understanding of the impact of the transactions; and

     (2) Dollar amounts assigned to transactions, and the impact of determining the terms of the transactions, if different from prior periods;

  d. If two or more companies are under common control via ownership or management, the disclosure in a. above is required, even though no transactions occurred, if the existence of that control <u>could</u> result in operating results or financial position significantly different from that which would have been obtained if the enterprises were autonomous.

Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements:

Incorrect interpretation of the definition and disclosure requirements of related party relationships and transactions, and other requirements or inacurate recording and reporting through error; or

committing irregularities, such as intentionally recording or reporting the nature and value not in accordance with established accounting principles, purchasing agency policies, regulations or legal requirements, in an effort to portray the provider as having no related party relationships or a lesser value of related party transactions than it actually has, or to represent that all disclosure responsibilities have been fulfilled; or

fraudulent or illegal reporting and use, including defalcation of commonwealth funds, could result in debarment and legal action. These actions would have a direct and material effect on the financial statement amounts, including a misstatement or a liability to the Commonwealth on the Balance Sheet.

Record Keeping

Compliance Requirement: Provider organizations are contractually required to maintain their financial books and record keeping systems in accordance with generally accepted accounting principles (GAAP) as set forth in the American Institute for Certified Public Accountants AICPA industry audit guide, Audits of Voluntary Health and Welfare Organizations, as specified in the general conditions of the contract. The record keeping system of provider organizations must keep on file data as are necessary to satisfy applicable reporting requirements of the Division of Purchased Services (DPS). Provider financial statements prepared in accordance with generally accepted accounting principles as set forth in the AICPA industry audit guide, Audits of Voluntary Health and Welfare Organizations, and audited in accordance with generally accepted government auditing standards (GAGAS) are contractually required to be filed with DPS. Financial books and records of providers must reflect revenues from every source, including each client, associated with and costs incurred in or allocated to any program of services rendered.

Source: "General Conditions," Article VIII, Contract Audit A. Maintenance of Records.

Suggested Audit Procedure:

- Ascertain whether the provider maintains a system of recording and documenting all revenues and expenses related to every source by fund and program on a functional and natural basis.

- Determine whether the provider has written cost allocation policies and plans that have been established in accordance with the recommendations of the AICPA industry audit guide, Audits of Voluntary Health and Welfare Organizations, for "Allocation of Costs Which Pertain to Various Functions" and SOP 78-10 par. 100.

- Ascertain whether the provider maintains records and procedures in accordance with the following provisions of GAAP which are contractually required:

    - Preparation and maintenance of up-to-date statement of job description and responsibilities.

    - Preparation and maintenance of a statement of job qualifications.

- Maintenance of resumes and job applications of employees, including name, address, social security number, education and/or experience, and copies of all licenses and certifications required to perform the job.

- Payroll and time and attendance records documenting program assignment and hours and days worked as prescribed by Federal Fair Labor Standards Act of 1938, as amended part 516 and MGL c. 151 the minimum Fair Wage Law.

o Ascertain whether the provider maintains other records and procedures in accordance with GAAP that provide internal control over the classification of expenditures as follows:

- Preparation of a detailed budget which incorporates Commonwealth purchased program services that is reviewed periodically by a committee of directors or trustees.

- Preparation of studies of the services performed by employees who serve more than one function, to determine the bases for allocating their salaries and expenses.

- Use of written instructions to employees on the preparation of time and expense reports covering the method to be followed in determining and indicating services being performed.

- Preparation and maintenance of up-to-date organization charts.

<u>Examples that increase the risk of noncompliance and could have a direct and material effect on the financial statements</u>:

Incorrect interpretation of the record keeping requirements of the contract could result in an inability to meet reporting requirements or inaccurate recording and reporting through error; or

committing irregularities, such as intentionally recording or reporting the nature and value not in accordance with GAAP, purchasing agency policies, regulations or legal requirements, in an effort to portray the provider as having financial program activities other than it actually had or to represent that all contractual and legal responsibilities have been fulfilled; or

fraudulent or illegal reporting and use, including defalcation of Commonwealth funds, could result in debarment and legal action. These actions would have a direct and material effect on the financial statement amounts, including a misstatement or a liability to the Commonwealth on the Balance Sheet.

AUDITOR'S COMPLIANCE SUPPLEMENT
ATTACHMENTS

DIVISION OF PURCHASED SERVICES
BUREAU OF AUDIT
AUDIT RISK ASSESSMENT FORM

Provider Name:_____

Vendor Code Number:_____Audit Number:_____

Area of Testing/Reporting:_____

In determining materiality and/or significance and audit risk which governs the level of testing required or the inclusion of a potential finding in the report, the auditor must consider the following:

	Factors to be Considered	Risk Level High	Moderate	Low	or %
a.	Amount of revenue and expenditures.	____	_____	___	_____
b.	Newness of the activity or changes in its condition.	____	_____	___	_____
c.	Adequacy of internal controls.	____	_____	___	_____
d.	Results of prior audits.	____	_____	___	_____
e.	Level and extent of review or other form of independent oversight.	____	_____	___	_____
f.	Adequacy of the internal controls for ensuring compliance with laws and regulations.	____	_____	___	_____
g.	Management's adherence to applicable laws and regulations.	____	_____	___	_____
h.	Audit report users' expectations.	____	_____	___	_____
i.	Public perceptions and political sensitivity of the areas under audit.	____	_____	___	_____
j.	Audit requirements (tests required by audit objectives).	____	_____	___	_____

Total risk level developed from above considerations during survey/planning stage of engagement: _____

Level of initial testing required: _____

Revised level of testing developed from initial test: _____

Potential finding included or dropped because of materiality: _____

THE COMMONWEALTH OF MASSACHUSETTS

Office of the Secretary of State

Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: 808 CMR 1.00

CHAPTER TITLE: Pricing, Reporting and Auditing for Social Programs

AGENCY: Division of Purchased Services

SUMMARY OF REGULATION

State the general requirements and purposes of this regulation:

808 CMR 1.00 establishes uniform rules and procedures for the pricing, reporting and auditing of social service programs purchased by state agencies from private providers, including the pricing of c. 71B programs which are also purchased by cities and towns.

REGULATORY AUTHORITY: St. 1992, c. 133, s. 113

AGENCY CONTACT: Barbara M. Watson PHONE: (617) 727-7500, Ext. 281

ADDRESS: Division of Purchased Services, Department of Procurement and General Services, One Ashburton Place, Boston, MA 02108

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION

If this regulation is adopted as an emergency regulation, state the nature of the emergency.

PRIOR NOTIFICATION AND/OR APPROVAL

If prior notification to and/or approval of the Governor, legislature or others was required, list each notification, approval and date, including notice to the Local Government Advisory Commission:

Notices: Local Government Advisory Commission (Massachusetts Municipal Association and Executive Office of Communities and Development) - August 28, 1992, also for 808 CMR 1.08 - August 7, 1992
Social Service Policy Advisory Board - August 28, 1992, also for 808 CMR 1.08 - August 7, 1992

PUBLIC REVIEW

Was notice of the hearing or comment period filed with the Secretary of State published in appropriate newspapers and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period?

Yes [X] Date of public hearing or comment period: October 21, 1992

FISCAL EFFECT

Estimate the fiscal effect on the public and private sectors:

For the first and second years:
For the first five years:
No fiscal effect:

This version of 808 CMR 1.00, as the prior version, incorporates through its financial reporting requirements federally mandated audit requirements which have increased audit costs to providers and the Commonwealth over the last several years. The maximum possible fiscal effect of 808 CMR 1.08 on the public sector, including the Commonwealth and cities and towns, from FY 1993 to FY 1994 is estimated at $8,809,878.

SMALL BUSINESS IMPACT

State the impact of this regulation on small business. Include a description of reporting, record keeping and other compliance requirements as well as the appropriateness of performance versus design standards and whether this regulation duplicates or conflicts with any other regulation. If the purpose of this regulation is to set rates for the state this section does not apply.

This regulation provides the procedures for establishing "prices," formerly referred to as rates, for social service programs. St. 1989, c. 688 exempts rate setting regulations from filing a small business impact statement. However, this regulation also sets forth financial reporting and other administrative requirements of provider agencies, including financial reporting necessary to satisfy federal requirements, which must be satisfied by all providers.

CODE OF MASSACHUSETTS REGULATIONS INDEX

List key subjects entries that are relevant to this regulation:

Pricing	Auditing	Social Service
Rate Setting	Purchase-of-Service	Financial Reporting

PROMULGATION

State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) to repeal, replace or amend. List by CMR number:

This regulation replaces and amends 808 CMR 1.00 as in effect prior to the effective date of of this filing.

ATTESTATION

The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency. ATTEST:

Signature: _____ Date: 11/6/92

Dana Roszkiewicz, Assistant Commissioner and Deputy Purchasing Agent

Publication *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: 700 DATE: 11/20/92

EFFECTIVE DATE: 11/20/92

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages: CMR: Vol.	*Insert these pages:*
1-2	1-2
3-26	3-26.4

A TRUE COPY ATTEST

MICHAEL JOSEPH CONNOLLY
SECRETARY OF STATE

DATE 11/6/92 PC

808 CMR 1.00: PRICING, REPORTING AND AUDITING FOR SOCIAL SERVICE PROGRAMS

Section

1.01: Scope, Purpose and Effective Date
1.02: Definitions
1.03: General Provisions
1.04: Filing and Reporting Requirements; Penalties; Enrollment and Utilization Statistics
1.05: Additional Information Requested by the Division; Examination and Availability of Records; Field Audits
1.06: Price Structure
1.07: Price Determination for Negotiated Programs
1.08: Price Determination for Approved Private School Programs
1.09: Price Determination for New Programs
1.10: Price Determination for Special Cases
1.11: Price Adjustment - Amendments to Negotiated Program Prices
1.12: Price Adjustment - Approved Private School Program Extraordinary Relief
1.13: Price Adjustment - Transfer of Program Ownership
1.14: Price Adjustment - Administrative Review
1.15: Non-Reimbursable Costs
1.16: Effect of Pending Appeals
1.17: Price Limitation
1.18: Reimbursement as Full Payment
1.19: Reporting Forms, Schedules and Instructions; Schedule of Asset Service Lives; Not-for-Profit Provider Surplus Revenue Retention
1.20: Debarment
1.21: Severability of the Provisions of 808 CMR 1.00

1.01: Scope, Purpose and Effective Date

(1) Scope, Purpose and Effective Date. 808 CMR 1.00 governs pricing, reporting and auditing of purchased social service programs subject to the authority of the Division of Purchased Services by virtue of St. 1992, c. 133, s. 113, or any successor provision thereto. 808 CMR 1.00 applies to any Executive Office, Department, Agency, Board, Commission or Institution of the Executive Department, excluding the Legislative and Judicial Departments, the Constitutional Offices, the Public Institutions of Higher Education and independent public authorities. As 808 CMR 1.00 applies to services purchased pursuant to M.G.L. c. 71B, it also applies to Commonwealth cities and towns. 808 CMR 1.00 shall be effective on November 20, 1992. 808 CMR 1.00 applies to all programs and services procured under 808 CMR 2.00.

(2) Disclaimer of Authorization of Services. 808 CMR 1.00 does not provide authorization for or approval of the substantive programs for which prices are determined pursuant to 808 CMR 1.00. Agencies which purchase services from providers are responsible for the definition, authorization and approval of the services extended to clients. Information concerning substantive program requirements must be obtained from purchasing agencies.

(3) Authority. 808 CMR 1.00 is adopted pursuant to St. 1992, c. 133, s. 113, or any successor provision thereto.

1.02: Definitions

As used in 808 CMR 1.00, unless the context requires otherwise, terms shall have the meanings ascribed in 808 CMR 1.02.

Administration and Support Costs. Administration and support (management and general) costs include expenditures for the overall direction of the organization, general record keeping, business management, budgeting, general board activities and related purposes. "Overall direction" includes the salaries and expenses of the chief officer of the organization and the chief officer's staff. If such staff spends a portion of its time directly supervising fundraising or program service activities, such salaries and expenses are considered indirect fundraising or program costs and should be prorated (allocated) among those functions by position title, for instance, program director, or type of expense.

1.02: continued

Authorized Price. A price or rate of payment which has been authorized by the Division of Purchased Services. The Division of Purchased Services authorizes a price by approving a negotiated price or by certifying a specialized placement price, an individual price or a price for a program approved by the Department of Education pursuant to M.G.L. c. 71B. In the case of Medicaid (Title XIX of the Social Security Act) reimbursable prices, an authorized price is the rate set by the Rate Setting Commission or by the Department of Public Welfare pursuant to M.G.L. c. 118, s. 4A. The authorized price is the rate or price which shall govern payment for services within the authority of 808 CMR 1.00.

Assistant Commissioner. The Assistant Commissioner of the Division of Purchased Services appointed pursuant to St. 1992, c. 133, s. 113, or any successor provision thereto.

Bad Debt. The portion of an account or note receivable that proves to be entirely uncollectible despite collection efforts.

Board of Education. The Massachusetts Board of Education established under M.G.L. c. 15, s. 1E.

Chapter 71B Approved Private School. A private school approved in accordance with the Department of Education's Regulations for the approval of Private Special Education Schools to Serve Publicly Funded Students appearing in 603 CMR 18.00.

Chapter 71B Regulations. The Department of Education's Chapter 766 Regulations promulgated under M.G.L. c. 71B (St. 1972, c. 766) appearing in 603 CMR 28.00, or any successor provisions thereto.

Client. An individual eligible for and/or receiving services through a program funded in whole or in part by a Commonwealth purchasing agency or city or town, including a student receiving services under M.G.L. c. 71B. Also referred to as "Consumer."

Client Resources. Revenue received in cash or in kind from clients to defray all or a portion of the cost of services. These may include supplemental social security income received by the provider to defray the room and board expense of residential clients, clients' food stamps, or payments made by clients according to ability to pay, such as a sliding fee scale.

Commercial Income. The difference between gross revenues and gross expenses resulting from the production of commercial products and services by clients.

Component Price. The price or range of prices for a program component, as defined by the Division of Purchased Services and published in the Component Price Catalogue.

Component Price Catalogue. The Component Price Catalogue, as amended from time to time, established by the Division of Purchased Services and containing a price or range of prices for given program components and instructions for calculating the total price of a social service program using the prices or range of prices for the individual program components.

Cost Inflation Factor. An estimated rate of inflation submitted by the Division of Purchased Services to the Secretary of Administration and Finance on an annual basis pursuant to St. 1992, c. 133, s. 113, or any successor provision thereto.

Cost Reimbursement. A payment arrangement under which the purchasing agency reimburses the provider for budgeted costs actually incurred in rendering the services specified in the agreement, up to a stated maximum obligation.

1.02: continued

Costs which Pertain to Various Functions. Many costs apply to more than one functional purpose. In such cases, it may be necessary to allocate these costs among functions because their degree of usage cannot be readily and specifically identified with each function. Examples include salaries of staff who perform more than one type of service, rental of a building used for various program services, administration and support, and fundraising activities. Where employees perform duties that relate to more than one function, the salaries of such individuals, as well as all other expenses which pertain to more than one function, should be allocated to the separate functional categories based on procedures that determine, as accurately as possible, the portion of the cost related to each function.

Days. Calendar days, unless otherwise specified in 808 CMR 1.00.

Debarment. The process whereby an organization or individual is determined ineligible to bid for or be awarded any public contract or subcontract for the purchase of any social service program or to provide special education services to a Massachusetts student for a specified period of time to be determined by the Division of Purchased Services, pursuant to the provisions of 808 CMR 1.20 and 808 CMR 2.15.

Department of Education. The Massachusetts Department of Education, including its departments and divisions, established by M.G.L. c. 15, s. 1.

Direct Client Wages. Wages earned by clients by performing commercial services, including production/service work or other functions which directly support or assist the direct production/service work of others (for instance, delivering piecework materials to an assembly bench or loading finished product on trucks). Direct client wages shall not include bonuses and awards, holiday and vacation pay, fringe benefits, stipends, incentives or any wages which are not directly related to productivity or which do not involve activities which generate commercial revenues for the provider.

Division of Purchased Services (also referred to as the Division). The office established by St. 1992, c. 133, s. 113 within the Department of Procurement and General Services, under the Executive Office for Administration and Finance.

Earnings Factor. An allowance for proprietary providers which provides for the realization of earnings in the delivery of a program of services. An earnings factor may be negotiated at the time of the procurement.

EOHHS Agency. An agency under the jurisdiction of the Executive Office of Health and Human Services established under M.G.L. c. 6A, s. 16.

Fee-for-Service. A payment arrangement under which the purchasing agency agrees to pay for a program or treatment at an established price per service unit.

Fiscal Year of the Commonwealth. The twelve month period beginning on July 1 and ending on June 30th.

IEP. An individualized education plan developed by a local school district's evaluation team and containing the elements described in the Department of Education's Chapter 766 Comprehensive Special Education Regulations appearing at 603 CMR 28.322 and 608 CMR 28.323.

ISP. An individual service plan developed by a purchasing agency in accordance with the purchasing agency's regulations or guidelines. (See 104 CMR 15.02)

1.02: continued

Indirect Client Compensation. All compensation not directly earned by clients performing commercial services such as production/service work or other functions which directly support or assist the direct production/service work of others. Indirect client compensation includes but is not limited to bonuses and awards, incentives, holiday and vacation pay, fringe benefits, stipends, incentives or any wages which are not directly related to productivity or which do not involve activities which generate commercial revenues for the provider.

Individual Price. The reimbursement price for additional unique or specialized services for a client which are not reimbursed in the established program's price but are required by an approved IEP or ISP. In the case of an ISP, the purchasing agency must specifically approve such additional service.

Interim Price. The price agreed to by a purchasing agency and a provider which is contained in a contract filed with the Office of the Comptroller will be the interim price for the contract unless the price is authorized prior to the filing.

LEA. A local education authority local school district or public school pursuant to M.G.L. c. 71B or c. 76, s. 1.

Local Administrator of Special Education. The person appointed by the school committee of any city, town or school district to serve as the Administrator of Special Education in accordance with the provisions of M.G.L. c. 71B and the Department of Education's Chapter 766 Comprehensive Special Education Regulations (603 CMR 28.000)

Maximum Obligation. The maximum dollar amount of the purchasing agency's agreement to pay for a program of services.

Negotiated Program. A program purchased through Purchase-of-Service, except programs procured under M.G.L. c. 71B. See 808 CMR 2.00.

New Program. A program designed to serve clients which previously has not been approved or funded and for which a rate or price previously has not been set.

Off-Setting Revenue. Off-Setting revenue shall be the sum of the following items:

(a) Any provider funds (including but not limited to public and private grants, gifts, contributions, bequests, endowments, or any income therefrom, funds received from the Job Training Partnership Act, the Massachusetts Department of Education's Bureau of Nutrition, or similar funding) to the extent that these sources are restricted to use in the program and during the year for which a price is developed;

(b) the amount of unrestricted funds voluntarily designated by the provider to defray the cost of program services to a purchasing agency;

(c) the fair market value of any public employees assigned to work in the provider's program (including salaries, fringe benefits and travel allowances) and/or the occupancy of public facilities to the extent that they are available to the program without charge or at less than the component price;

(d) any funds (including but not limited to Supplemental Social Security Income, Food Stamps, General Relief benefits, reimbursements from third-party payors, client sliding fee scale payments) received by or available to the provider during the price year on account of clients;

(e) in the case of commercial services, such as production/service work, a deduction may be taken for the commercial income derived from the provision, production or assembling of commercial services by clients;

(f) the value of funds used to defray non-reimbursable costs; and,

(g) funds accrued in excess of the limitations established in 808 CMR 1.19(3).

Office for Children. An office of the Commonwealth established by M.G.L. c. 28A.

1.02: continued

Operating Capacity. The maximum number of service units of a program for which there is adequate planned and budgeted space, equipment and staff, as determined and certified by the primary program purchaser. Operating capacity cannot exceed licensed capacity.

Out-of-State Provider. Any legal entity that operates all of its programs outside the Commonwealth of Massachusetts.

Out-of-State Agency. A state other than the Commonwealth of Massachusetts or any department, agency board, commission, office or political subdivision of that state.

Price. The amount in dollars to be paid for a given service or program regardless of how expressed. Also referred to as "rate".

Price Year or Year. The year for which an authorized price is to be effective.

Pricing Bureau. A bureau established within the Division of Purchased Services by St. 1992, c. 133, s. 113, which includes the Special Education Pricing Unit.

Primary Program Purchaser. The purchasing agency which purchases the greatest portion of a particular program. In the case of a private school program, the Department of Education (DOE) shall be the primary program purchaser.

Private School/Approved Private School. A private day or residential school within or outside of the Commonwealth of Massachusetts which has been approved by the Department of Education pursuant to 603 CMR 18.00. Also referred to as M.G.L. c. 71B Approved Private School.

Private School Program. A program offered by an approved private school which also has been approved pursuant to 603 CMR 18.00.

Program. The delivery of one or more discrete services in an organized and coordinated fashion in order to achieve objectives common to all program participants.

Provider. An individual, sole proprietor, corporation, partnership, organization, trust, association, or other legal entity agreeing to provide services to clients of the purchasing agency.

Purchase-of-Service. The buying of social service programs for clients of purchasing agencies by the purchasing agencies through negotiating and contracting with private providers. For the purpose of 808 CMR 1.00, "Purchase-of-Service" does not include the purchase of private school programs.

Purchasing Agency. The Commonwealth of Massachusetts or any Secretariat, board, commission, department, division or agency of the Commonwealth of Massachusetts which is authorized to procure social services under the General Laws of the Commonwealth and which procures services under 808 CMR 2.00. In addition, for the purposes of social services purchased pursuant to M.G.L. c. 71B, "purchasing agency" includes the Department of Education, local education authorities, local school districts and public schools.

Rate Setting Commission. The department established within the Executive Office of Health and Human Services by M.G.L. c. 6A.

Reimbursable Operating Costs. Those costs reasonably incurred or expected to be incurred by a program in the provision of services with the exception of any costs delineated in accordance with 808 CMR 1.15.

1.02: continued

Related Party. Any of the following are considered a related party to the provider subject to disclosure and certain reimbursement restrictions when providing rent, services, loans, payments, conveyances, gifts, any other transactions or having receivables or payables associated with a transaction to or from the provider:

(a) A person who is or was within the preceding five years a director, stockholder, partner, administrator, manager or trustee of the reporting provider, or a relative of such a person, or an organization in which a person, who currently serves as a director, stockholder, partner, administrator, manager or trustee of the organization, or a relative of such a person, is, or was within the preceding five years, a director, stockholder, partner, administrator, manager or trustee of the reporting provider. "Relative" shall mean parent, child, brother, sister (whether by whole or half-blood), spouse, adopted child, adoptive parent, stepparent, stepchild, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, grandparent or grandchild; or,

(b) Any organization, corporation, partnership, or fiduciary trust where any common ownership or control is held by a person who falls within the scope of paragraph (a) above or by a relative of such a person. "Control" is the ability to influence the policies and actions of an enterprise through ownership of voting stock, contracts and/or other methods, as defined by the AICPA Financial Accounting Standards Board in Statement of Financial Accounting Standard No. 57; or is the ability of an individual or organization, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution; or,

(c) Another corporation, partnership, organization or individual doing business solely with the reporting provider or the provider's related parties; or,

(d) A person or organization associated or affiliated with the reporting provider. A person or organization is associated when the person or organization engages in a joint program or business venture directly or indirectly in which the provider or other person or organization receives direct or indirect financial benefit. A person or organization is affiliated when the person or organization:

1. controls a provider; or
2. is controlled by a provider; or
3. is under common control with the provider.

The control may be direct or indirect. A provider or company is under common control with the provider through common ownership or management, even though no transaction occurred, if the common control could have a material impact on the financial statements of the reporting provider, as provided in AICPA Statement of Financial Accounting Standard No. 57. For the purpose of this paragraph, "common ownership" exists where there is direct or indirect ownership of ten percent or more in value of voting stock or five percent of financial interest in the capital assets or profits of any organization.

Reporting Year. The provider's fiscal year which is used when reporting to the Division on the Uniform Financial Statements and Independent Auditor's Report ("UFR").

Restricted Funds. Current restricted funds as defined in the UFR as funds which have been designated to a specific use by their donor and which are currently available for that use alone. Funds which have been restricted as to application by the board of the provider are not considered restricted.

Service Unit. A measurable unit of program activity, productivity or performance as determined by the purchasing agency. The service unit may be measured in an unit of time, such as an hour of counseling or a residential day; or by the completion of a prescribed procedure, such as a client evaluation; or by any other measurable unit of service. The reservation of all or a portion of a program's operational capacity for the purchasing agency's exclusive use, whether or not the capacity is in fact utilized, may constitute a service unit, if the contract so provides.

1.02: continued

Social Service Program. Any social, habilitative, rehabilitative, health, mental health, mental retardation, special education, employment and training, or elder services program, including any program provided pursuant to M.G.L. c. 71B, but excluding any program or service which is reimbursable under Title XIX of the Social Security Act.

Special Education Program Pricing Unit. A unit established within the Division of Purchased Services by St. 1992, c. 133, s. 113 with responsibility for establishing the methodology and prices for special education programs and services.

Specialized Placements. Placements approved by the Department of Education or other purchasing agency to programs not approved under M.G.L. c. 71B, to meet the requirements of an IEP or ISP of clients with unique placement needs. These placements are referred to as "sole source" placements in St. 1992, c. 133, s. 113.

Submit or Submission. To deliver a document by hand or by depositing it with the U.S. Post Office or other delivery service, postage pre-paid.

Suspension. The immediate, temporary disqualification of an organization or individual who is suspected upon adequate evidence of engaging or having engaged in conduct which constitutes grounds for debarment, pursuant to the provisions of 808 CMR 1.20 and 808 CMR 2.15. A suspension shall not exceed three months unless administrative, such as debarment, or judicial proceedings, civil or criminal, are instituted against the provider within that time.

Uniform Financial Statements and Independent Auditor's Report. The Uniform Financial Statements and Independent Auditor's Report developed by the Division of Purchased Services and required to be filed by providers of social service programs with the Division. Also referred to as the UFR.

Unrestricted Funds. Current unrestricted funds defined in the Uniform Financial Statements and Independent Auditor's Report as funds which have not been restricted to a specific use by their source. Funds which have been "restricted" or "designated" by the organization's governing body to a specific use are unrestricted for these purposes.

Utilization. The total number of service units actually delivered or budgeted to be delivered, regardless of the amount or source of payment received.

1.03: General Provisions

(1) Payment of Prices. Only authorized or interim prices shall be paid by purchasing agencies for social service programs.

(2) Effective Date of Prices. Prices are effective as of the date of authorization of the contract, unless otherwise specifically stated or limited by law.

(3) Interim Prices. Unless the Division notifies the purchasing agency otherwise, within three calendar months of the interim price being filed with the Comptroller, the interim price becomes the authorized price.

(4) Authorization of Prices and Certification to the Comptroller. The Division of Purchased Services will authorize prices and provide notice of authorized prices to the Office of the Comptroller. The Division of Purchased Services will authorize a price by approving the negotiated, component or unit price or, in the case of a special education program, by directly certifying a price.

(5) Client Identification. No documents submitted to the Division of Purchased Services shall include information that identifies a client by name or by other means that includes personally identifiable information. Client identification numbers or another numbering scheme should be utilized.

1.03: continued

(6) Waiver of Regulations. Upon request of a purchasing agency or provider, the Division may waive the applicability of one or more provisions of 808 CMR 1.00, provided that all such requests and approvals:

(a) are in writing signed by the head of the purchasing agency or the chief executive officer of the provider or a designee;

(b) specify the transactions to which such waiver would apply and the provisions of 808 CMR 1.00 to be waived;

(c) include a certification that the purchasing agency or provider has made a good faith effort to comply with said provisions; and

(d) are accompanied by supporting documentation deemed sufficient by the Division to support the special circumstances or the need for the relief. Waivers do not affect the responsibility of a purchasing agency or provider to comply with other applicable regulations or statutes.

(7) 808 CMR 1.15 Prohibitions. The failure of a purchasing agency or the Division to identify violations of 808 CMR 1.15 in determining or authorizing a price shall not be deemed a waiver of violations of 808 CMR 1.15 which may be identified subsequently through administrative review or audit.

1.04: Filing and Reporting Requirements; Extensions; Penalties; Enrollment and Utilization Statistics

(1) Reporting for Annual Review. Each provider shall, on or before the 15th day of the fifth month after the end of its fiscal year, submit to the Division of Purchased Services a complete Uniform Financial Statements and Independent Auditor's Report (UFR) or a certification of exemption, in accordance with the regulatory standards and instructions contained in the Uniform Financial Statements and Independent Auditor's Report (UFR).

(2) Extensions. The Division may, for cause, pursuant to the regulatory standards and instructions contained in the Uniform Financial Statements and Independent Auditor's Report (UFR), grant one extension of the filing deadline for submission of the reporting requirements contained in 808 CMR 1.04(1) upon written request by the provider. A request for an extension must be received by the Division prior to the original due date.

(3) Penalties. Failure to file the Uniform Financial Statements and Independent Auditor's Report (UFR) as required, within 30 days of the filing deadline, may result in a delay of payment for up to ten percent, as determined by the Division, of the provider's monthly billing by its purchasing agencies. In addition, the Division may request that the purchasing agency determine that the provider is ineligible for the ready-payment system under 815 CMR 3.10(1).

(4) Enrollment and Utilization Statistics. Every Approved Private School shall submit to the Division of Purchased Services a quarterly report which lists, by month, the year to date average enrollment and utilization of each of its programs. The reports shall be submitted in writing to the Special Education Program Pricing Unit by October 15, January 15, April 15, and July 15, and shall cover the three completed months which immediately precede the submission date of the individual reports.

1.05: Additional Information Requested by the Division; Examination and Availability of Records; Field Audits

(1) Requests for Additional Information. Each provider and purchasing agency shall file such additional information as the Division of Purchased Services may from time to time require no later than 21 days after the date of the postmark of a written request. If the Division's request for the missing or additional information and/or documentation is not fully satisfied through the submission of written explanations(s) and/or documentation within 21 days of the postmark of that request and an extension has not been granted, all costs relative to the request shall be excluded from any price calculation. A written request for an extension must be received by the Division prior to the expiration of the 21 days.

(2) Availability of Records. Each provider shall make all records relating to its operation available for audit.

1.05: continued

(3) Document Retention. All documents used in determining a proposed price or in support of a price request shall be retained by the provider and purchasing agency for seven years from the date of final payment.

(4) Certifications. All materials submitted by a provider to the Division of Purchased Services shall be certified under pains and penalties of perjury as true, correct and accurate by a Massachusetts independent public accountant engaged by the provider or by the Executive Director or Chief Financial Officer of the provider.

(5) Examination of Records. Upon request of the Division, a provider shall make available for inspection all records relating to its operations and all records relating to a related party, service or holding company or any entity in which there may be a common ownership or interrelated directorate.

(6) Field Audits. The Division of Purchased Services may coordinate and conduct field audits. The Division will attempt to schedule audits at times which are convenient for all parties.

(7) Audit Resolution Policy. The Division will develop and amend, from time to time, an audit resolution policy in accordance with generally accepted government auditing standards. The policy will provide a process for determining the purchasing agency to be primarily responsible for developing and implementing corrective action and executing a corrective action plan with a provider, and may include provisions for recoupment and price adjustment.

1.06: Price Structure

(1) Fee-For-Service. Agreements for services with a stable and measurable unit of service must be purchased on a fee-for-service basis unless the provisions of 808 CMR 1.06(2) or (3) apply. Fee-for-service includes purchasing by negotiated prices, by component pricing, and/or by unit prices. Private school programs are deemed to be reimbursed on a fee-for-service basis.

(2) Accommodations Purchase. Agreements for services without a predictable measure of client utilization, where the service is required to be available on a routine basis notwithstanding the quantity of services actually delivered (e.g., emergency services) may be purchased by means of the establishment of a temporal (e.g., hourly, daily, weekly, monthly) unit rate, called "Accomodations Purchase". Accommodations Purchase must not be used as a substitute for fee-for-service purchase where an agreement is otherwise covered by the provisions of 808 CMR 1.06(1).

(3) Cost Reimbursement. Purchasing agencies may purchase services on a cost reimbursement basis only if:

(a) The contract is in the start-up year; or

(b) The purchasing agency has reason to monitor the actual expenditures of the provider; or

(c) Special circumstances exist which make service delivery under the fee-for-service or accommodations purchase provisions impractical or undesirable.

Permission to utilize cost reimbursement agreements under the provisions of 808 CMR 1.06(3)(c) may be authorized by the Division of Purchased Services in accordance with Division policy.

1.07: Price Determination for Negotiated Programs

808 CMR 1.07 applies to prices determined by negotiation and does not apply to private school programs. Price determinations for private school programs are governed by 808 CMR 1.08.

(1) Eligibility. To be eligible for a price determination, a provider must submit on an annual basis a Uniform Financial Statements and Independent Auditor's Report (UFR) as required by 808 CMR 1.04.

1.07: continued

(2) Submission. A provider shall submit to its purchasing agency completed negotiated budget and price calculation forms prepared in accordance with their accompanying instructions.

(3) Review. Upon receipt of a provider's negotiated budget and price calculation forms, the purchasing agency will review the forms to verify that they have been prepared in accordance with their instructions and to review whether the costs contained in them violate the provisions of 808 CMR 1.15. To the extent the forms have not been completed according to the instructions or to the extent the costs contained therein violate the provisions of 808 CMR 1.15, the purchasing agency or the provider must correct the forms accordingly.

(4) Adjustments. Following a review of a provider's completed negotiated budget and price calculation forms by the purchasing agency according to 808 CMR 1.07(3), the provider and the purchasing agency (hereafter referred to as the "negotiating parties") may jointly agree to make certain adjustments to the completed forms according to the provisions contained in 808 CMR 1.07(5). The resulting negotiated price shall be submitted in such format as required by the Division.

(5) Allowed Adjustments.

(a) Costs. The negotiating parties may adjust the negotiated budget and price calculation forms to reflect anticipated cost changes which will result from programmatic changes, agreed to by the negotiating parties, in the quantity and/or type of employees, plant, equipment, services, or other program components, provided that the resulting expense is not, nor has been, a disallowed cost according to 808 CMR 1.15.

(b) Income. The negotiating parties may adjust rate year off-setting income to reflect changes in income which are reasonably certain to occur.

(c) Price Year Utilization. The negotiating parties may adjust price year utilization subject to the following conditions:

1. Operating capacity has been increased or decreased resulting in a change in a program's cost.
2. Actual utilization does not accurately reflect the negotiating parties' best prediction of program utilization during the price year.
3. The negotiating parties shall explain in writing the reason for the adjustment including the basis for their prediction of the program's utilization during the price year and the increase or decrease in operating capacity.

(6) Negotiation Impasse. If during contract renewal negotiations, the negotiating parties fail to reach agreement on programmatic content, utilization, and outcomes at a defined price, then the negotiating parties may terminate the contract renewal negotiations. Prior to the termination of the negotiations, the parties shall document in writing the terms, conditions and price, or maximum obligation, of the last offer of the purchasing agency (the "impasse document"). The document must be signed by the parties and submitted by the purchasing agency to the Agency Head or designee for his/her information and to the Division of Purchased Services. The Agency Head or designee may resume negotiations with the provider or determine that the negotiations have been concluded. Where the negotiations have been concluded, the Agency Head may authorize the purchasing agency to negotiate and/or award the contract to a different provider. The Agency Head or designee should inform the Division of any resolution of the matter.

If a contract is awarded to a new provider, the negotiated price for the new provider should not exceed the price offered to the previous provider during renewal negotiations as provided in the impasse document and the terms and conditions should not be less restrictive or include less utilization. The terms and conditions and price for the new provider shall not be subject to amendment to increase the reimbursement price or to minimize the scope and terms of conditions without an accompanying decrease in price, for a minimum period of one year, unless an intervening event occurs, such as increased appropriation to the purchasing agency which results in across the board price increases to comparable providers of service.

1.07: continued

(7) Appeal of Purchasing Agency Action After Impasse.

(a) If a purchasing agency awards a contract to a new provider under 808 CMR 1.07(6), any provider who has executed an impasse document and is aggrieved by the action of the purchasing agency may appeal the award of the new contract to the Division of Purchased Services within 30 days of the award of the new contract. A provider is aggrieved if a new provider is offered or has received a price higher than that offered the provider or the terms and conditions of the new agreement are less restrictive or require less utilization than the terms offered the provider as set forth in the impasse document between the provider and the purchasing agency.

(b) The appeal to the Division shall be in writing and shall include a statement of the action in issue and a copy of the executed impasse document. A provider who has failed to sign an impasse document will be deemed to have waived appeal under this paragraph. The Assistant Commissioner or designee shall review the materials submitted. If the Assistant Commissioner finds that the provider is aggrieved, a meeting may be held with the purchasing agency and/or provider to review and discuss the matter. The Assistant Commissioner, where appropriate, will authorize a price for a new provider, only for services rendered prior to his/her review.

1.08: Price Determination For M.G.L. c. 71B Approved Private School Programs

(1) Price Determination for M.G.L. c. 71B Approved Private School Programs Located within the Commonwealth of Massachusetts or Outside the Commonwealth in a State where there is No State Rate or Price Setting Mechanism. 808 CMR 1.08(1) sets forth the rules to be applied by the Pricing Bureau in determining the annual tuition prices to be paid in Fiscal Year 1994 by Massachusetts purchasing agencies when purchasing M.G.L. c. 71B approved programs from M.G.L. c. 71B approved private schools located within the Commonwealth of Massachusetts or located outside of the Commonwealth in states which do not have a state rate or price setting mechanism.

The process and methodology contained in 808 CMR 1.08 does not determine the tuition price that a school may charge for its programs. 808 CMR 1.08 establishes the process and methodology for the determination of what Massachusetts and its purchasing agencies will pay for the school's programs. As a result, 808 CMR 1.08 does not impose a ceiling on the amount a M.G.L. c. 71B approved school may charge to other purchasers of the same or a similar program for which a price is established pursuant to 808 CMR 1.08 for Massachusetts purchasing agencies. For the purposes of 808 CMR 1.08, the term "purchasing agency" shall mean the Commonwealth of Massachusetts or any board, commission, department, division, agency, office, school district or political subdivision of the Commonwealth.

The pricing process set forth in 808 CMR 1.08 shall not result in the elimination of any position title, any full-time equivalent assigned to the position title, or any other item listed on the school's projected program budget(s) which is mandidated by individual education plan, law or regulation or which is necessary to support the delivery of mandated educational and program services, whether the mandate is by individual education plan, law or regulation. The projected costs, however, set forth in program price applications will be subject to discussion and evaluation.

The process and methodology contained in 808 CMR 1.08 are based on the following principles:

1. that the prices established by the Pricing Bureau for the purchase by Massachusetts purchasing agencies of special education programs provided by M.G.L. c. 71B approved private schools should reflect the anticipated costs of providing the program services that the Commonwealth and cities and towns choose to purchase because they are mandated by individual education plans, law or regulation or they are reasonably necessary to provide mandated program services:

2. that the pricing methodology should encourage cost efficiency in the provision of special education services by M.G.L. c. 71B approved schools:

1.08: continued

3. that the pricing methodology should support where possible provider efforts to raise direct care workers' salaries to the low end of the price ranges contained in the Component Price Catalogue dated January 14, 1992 (808 CMR 3.00) for the positions; and,

4. notwithstanding other objectives, in no event should an annual price determined to be paid by Massachusetts purchasing agencies through the system-wide price determination process contained in 808 CMR 1.08 increase from Fiscal Year 1993 to Fiscal Year 1994 by more than inflation, as demonstrated by the cost inflation factor determined by the Division of Purchased Services under St. 1992, c. 133, s. 113; extraordinary circumstances experienced by a school requiring a greater increase should be addressed, where appropriate, through the provisions of 808 CMR 1.12.

(a) Designation of Approved Schools for Pricing Purposes. The Pricing Bureau will assign all M.G.L. c. 71B approved schools to one of two groups, Section A and Section B. Fiscal Year 1994 prices for Section A school programs will be determined through the process described in 808 CMR 1.08(1)(f). Prices for Section B school programs will be determined as provided in 808 CMR 1.08(1)(g).

(b) Criteria for Designation to Section A. Schools which fall within the following categories will be designated Section A schools:

1. schools whose costs for one or more programs as reported on the Uniform Financial Statements and Independent Auditor's Report (UFR) filed for Fiscal Year 1991 exceeded the Fiscal Year 1991 annual price authorized pursuant to St. 1990, c. 150, ss. 42-44 for the program(s) by 15 or more percent;

2. schools whose costs for one or more programs as reported on the Uniform Financial Statements and Independent Auditor's Report (UFR) filed for Fiscal Year 1991 were below the Fiscal Year 1991 annual price authorized pursuant to St. 1990, c. 150, ss. 42-44 for the program(s) by 15 or more percent; and,

3. schools designated by the Pricing Bureau for good cause.

For the purpose of determining costs per program, the Pricing Bureau will divide total program expenses, as reported on the Fiscal Year 1991 UFR by the average year-to-date enrollment for Fiscal Year 1991.

(c) Criteria for Designation to Section B. All schools not selected as Section A schools under 808 CMR 1.08(1)(b) or (e) will be designated Section B schools.

(d) Notification of Designation. The Pricing Bureau will inform M.G.L. c. 71B approved schools in writing of their assignment to Section A or Section B. All M.G.L. c. 71B approved programs operated by the same school will be assigned to the same section.

(e) Change in Designation. The Pricing Bureau may reassign a school if the reassignment would be in the public interest. In determining whether reassignment would be in the public interest, the Pricing Bureau may consider whether an error was made in the initial assignment of the school, any unique circumstances experienced by a school, and any additional reasons a school might provide in support of a reassignment. To request reassignment, a school must submit a written request which states the reasons for requesting the reassignment to the Pricing Bureau within 15 calendar days of the postmark of the notice of assignment. The Bureau will notify the school of any action on the request.

(f) Price Determinations for Section A Programs.

1. Price Application Filing and Required Information. The Pricing Bureau's notification to Section A schools pursuant to 808 CMR 1.08(1)(d) or (e) shall include a price determination application for Fiscal Year 1994. An application, in the form determined by the Pricing Bureau, must be completed in full for each M.G.L. c. 71B approved program operated by the school and returned to the Pricing Bureau in accordance with the instructions and time frames contained therein. Blank application forms may be reproduced by photocopying.

1.08: continued

2. Price Application Evaluation. Upon receipt of a fully completed Fiscal Year 1994 price application, the Pricing Bureau will assign the application to an advisory pricing committee as provided in 808 CMR 1.08(1)(f)3. which will review, discuss and make recommendations regarding the program price application to the Pricing Bureau pursuant to 808 CMR 1.08(1)(f)4. and 5. All applications submitted by a school will be assigned to the same pricing committee. If the Pricing Bureau and school agree to proceed without review by a pricing committee, the Pricing Bureau will review the application as described in 808 CMR 1.08(1)(f)4. using the Evaluation Tools and Evaluation Criteria set forth in 808 CMR 1.08(1)(f)5. and 6. and will authorize a price pursuant to 808 CMR 1.08(1)(f)8.

3. Pricing Committee Composition and Responsibilities. The Pricing Bureau will convene a pricing committee to review a school's program price application(s) for the purpose of assisting and advising the Pricing Bureau in the evaluation of the school's application(s). The composition of the committee will be determined by the Pricing Bureau and may include a representative of the Pricing Bureau, a representative of the Department of Education, at least one representative of a Local Education Authority and a representative of another M.G.L. c. 71B approved private school whose application(s) are under review. If a school receives funds from an agency within the Executive Office of Health and Human Services, the agency may designate an agency representative to participate in the pricing committee.

There should be no evidence of undue bias or past engagements which may unduly influence either the quality or the nature of the participation of a given individual on the pricing committee.

A representative of the school will be invited to attend all meetings of the pricing committee on the school's program price applications for the purpose of addressing questions and providing additional information to assist in the evaluation of the price application. The pricing committee meeting may proceed in the absence of any member, except no meeting will take place in the absence of a representative of the Division of Purchased Services or the Department of Education.

4. Review Process. The pricing committee will review the price application using the Evaluation Tools and Evaluation Criteria set forth in 808 CMR 1.08(1)(f)5. and 6. to determine (1) how program costs may be adjusted, and efficiencies may be achieved without the elimination of any position title, any full-time equivalent assigned to the position title, or any other item listed on the school's projected budget(s) which is mandated by individual education plan, law or regulation or is necessary to support the delivery of educational services which are mandated by individual education plans, law or regulation; and, (2) whether the projected costs included in the program price application are reasonable. During the course of the pricing committee s review of the application, the school may agree to make adjustments to its program price application. In addition, in recommending adjustments to projected costs of the program price application, the pricing committee may not make recommendations relative to reduction in amounts to the items listed below, unless the reduction of these items is necessary to achieve a program price within the inflation limitation contained in 808 CMR 1.08(1)(f)8.:

a. any projected direct care staff position cost increases over Fiscal Year 1993 costs which are necessary to raise the salary level of the position up to the low end of the component price range contained in the Component Price Catalogue dated January 14, 1992 (808 CMR 3.00) for the position;

b. agency administration costs to the extent that they fall within the ranges contained in the Component Price Catalogue dated January 14, 1992 (808 CMR 3.00) as applied to the school s costs on a graduated basis.

1.08: continued

Upon completion of the committee's review, the committee members will make recommendations to the Pricing Bureau relative to the program price application. As part of the recommendation, a member may recommend that the school submit an amended program price application. Recommendations will be made available to the school whose application is under review for inspection and copying.

5. Evaluation Tools. The following information will be considered by the Pricing Bureau and the pricing committee when reviewing a program price application: the program price application submitted by the school for the program; the expenses of the program as contained in the UFR for Fiscal Year 1991 for the school; the Cost Inflation Factor developed by the Division of Purchased Services for Fiscal Year 1994 in accordance with St. 1992, c. 133, s. 113, or any successor provision thereto; and, any other additional information provided to or developed by the Pricing Bureau for the purpose of evaluating price applications and projected program expenses. The Pricing Bureau will also consider any recommendations of pricing committee members.

6. Evaluation Criteria. The following criteria shall be considered by the Pricing Bureau and the Pricing Committee in evaluating a program price application: whether any position title, any full-time equivalent assigned to the position title, or any other item listed on the school's projected budget which is not mandated by an individual education plan, law or regulation or is not necessary to support the delivery of educational services which are mandated by individual education plan, law or regulation may be adjusted or eliminated; the reasonableness of mandated and/or non-mandated program costs as determined by comparison of projected program costs to the historical costs of other schools, by comparison to the program's historical costs, and by comparison to the component ranges contained in 808 CMR 3.00; the allowability of costs pursuant to 808 CMR 1.15; and, the necessity of costs to eliminate conditions which pose a threat to health and safety.

7. Application Amendments.

a. In Response to Committee Comments. Applications amended in response to a request under 808 CMR 1.08(1)(f)4. must be submitted to the Pricing Bureau within 15 calendar days of the pricing committee meeting at which the request was made or within 15 days of a request by the Pricing Bureau.

b. Corrections. If the Pricing Bureau identifies an error in the completion of an application or in any supporting documentation, the Bureau on its own initiative may correct the information and inform the school of the correction in the price notification or may request correction by the school.

8. Price Determination and Authorization. In accordance with the provisions of 808 CMR 1.08(1)(f)4., 5. and 6., after considering a Section A school's program price applications, amended Program Price applications, where appropriate, and any recommendations of a pricing committee, and for the reasons contained in its price authorization, the Pricing Bureau shall authorize Fiscal Year 1994 prices for the school's programs. In no event will a Fiscal Year 1994 authorized price for a Section A program determined under 808 CMR 1.08(1) exceed the program price in effect in Fiscal Year 1993 as of December 30, 1992 plus the Cost Inflation Factor developed by the Division of Purchased Services for Fiscal Year 1994 in accordance with St. 1992, c. 133, s. 113, or any successor provision thereto.

9. Failure to Respond.

a. Failure to File Price Application. If a Section A school fails to file an appropriately completed price program application for a program, the Pricing Bureau may authorize a Fiscal Year 1994 program price in an amount equal to the program price in effect for Fiscal Year 1993 decreased by one half of the Cost Inflation Factor developed by the Division of Purchased Services for Fiscal Year 1994 in accordance with St. 1992, c. 133, s. 113, or any successor provision thereto, or may take the program under Administrative Review pursuant to 808 CMR 1.14.

1.08: continued

b. Failure to Respond to Recommendations. If a Section A school fails to provide a good faith response to a request that the school amend a program price application under 808 CMR 1.08(1)(f)4. or 808 CMR 1.08(1)(f)7., the Pricing Bureau may authorize a Fiscal Year 1994 price equal to the Fiscal Year 1993 price for the program.

(g) Price Determination for Section B Programs.

1. Average Percentage Increase. The Pricing Bureau will calculate the average percentage increase for all Section A programs using the final program prices authorized under 808 CMR 1.08(1)(f)8. This average percentage increase will be applied to Section B Fiscal Year 1993 program prices to determine Section B Fiscal Year 1994 prices as provided in 808 CMR 1.08(1)(g)2.

2. Price Authorization. The Pricing Bureau will authorize as the Fiscal Year 1994 price for a Section B program the program's Fiscal Year 1993 price as of December 30. 1992 increased by the average percentage increase determined pursuant to 808 CMR 1.08(1)(g)1.

(h) Adjustment of Prices to Reflect Price Increases Due to Extraordinary Circumstances. Where appropriate, the Pricing Bureau will adjust prices authorized under 808 CMR 1.08(1)(f)8. and 808 CMR 1.08(1)(g)2. for Fiscal Year 1994 to reflect Fiscal Year 1993 price adjustments authorized under 808 CMR 1.12.

(i) Effect of Failure to File the Uniform Financial Statements and Independent Auditor's Report. Notwithstanding any other provision of 808 CMR 1.00, if a Section A or Section B school fails to file a Uniform Financial Statements and Independent Auditor's Report (UFR) or certificate of exemption for the most recent reporting year, in accordance with the instructions contained in the UFR, the price(s) in effect for the school's program(s) for Fiscal Year 1993 shall remain in effect for Fiscal Year 1994.

(2) Price Determination for M.G.L. c. 71B Approved Private School Programs Located Outside the Commonwealth of Massachusetts in States where there is a State Rate or Price Setting Mechanism. If a M.G.L. c. 71B approved private school program is located outside the Commonwealth of Massachusetts in a state which has an established state rate or price setting mechanism, the Pricing Bureau will authorize as the price to be paid by Commonwealth purchasing agencies for the program, the price established, authorized or approved by the state in which the program is located, as long as that price is the lowest price for the program.

The following documents must be submitted by the school, in order for the Pricing Bureau to authorize a program price:

(a) a Uniform Financial Statements and Independent Auditor's Report (UFR), or certificate of exemption, for the most recent reporting year, in accordance with the UFR's instructions;

(b) a certification from the school that the price to be charged to purchasing agencies is the lowest tuition price for the program; and,

(c) a copy of the authorization or approval by the state in which the program is located, including the effective dates of the price.

If the price established, authorized or approved by the state in which the program is located is not the lowest tuition price for the program, the school must include in its request the amount of the lowest tuition price for the program and the Pricing Bureau will authorize the lowest tuition price for the program.

Any price authorized under 808 CMR 1.08(2) shall be effective on the date that the Pricing Bureau takes action or on the effective date determined by the state in which the school is located, whichever is later.

Until a Fiscal Year 1994 price is authorized for a program subject to the provisions of 808 CMR 1.08(2), purchasing agencies shall continue to pay the price authorized for the program for Fiscal Year 1993.

(3) Review of Price Determination by the Assistant Commissioner. Any school or purchasing agency aggrieved by the price determined by the Pricing Bureau under 808 CMR 1.08(1)(f)8., 808 CMR 1.08(1)(g)2., 808 CMR 1.08(1)(h) and 808 CMR 1.08(2), and desiring a review thereof, may request that the Assistant Commissioner of the Division of Purchased Services, or designee, review the action by submitting a written request for review to the Assistant Commissioner within 15 calendar days of postmark or receipt in hand, whichever is earlier, of

1.08: continued

the Pricing Bureau's written decision. The written request for review must contain an explanation of the reasons for the request, including a statement describing how the party is aggrieved, and a copy of the Pricing Bureau's decision.

(4) Appeal to the Division of Administrative Law Appeals. Any school aggrieved by the Assistance Commissioner's action or failure to act under 808 CMR 1.08(3), and desiring a review thereof, may file an appeal under M.G.L. c. 7, s. 4H and St. 1992, c. 133, s. 113 with the Division of Administrative Law Appeals, within 30 days of notice of the Assistant Commissioner's decision under 808 CMR 1.08(3) or of the failure to act. The question on appeal of the decision shall be whether the Division of Purchased Services in taking the action challenged by the aggrieved party has properly applied its regulations.

1.09: Price Determination for New Programs

(1) Price Determination for New Negotiated Social Service Programs. The price of new negotiated social service programs shall be determined in accordance with the Component Price Catalogue and its instructions. To request an authorized price for a new negotiated social service program:

(a) The provider shall submit to its primary program purchaser completed negotiated budget and price calculation contract forms prepared in accordance with their instructions. Negotiated programs shall forward a clearly marked informational copy of the budget and price calculation forms to any secondary purchasing agencies.

(b) Upon receipt of a provider's negotiated budget and price calculation forms: the primary program purchaser must verify that they have been prepared in accordance with their instructions and review them for compliance with the provisions of 808 CMR 1.15. If the forms have not been completed according to their instructions or the costs violate the provisions of 808 CMR 1.15, the primary program purchaser or the provider must make appropriate corrections. The resulting price shall be submitted in such format as required by the Division.

(2) Price Determination for New Chapter 71B Approved Programs. To request an authorized price for a new program approved under M.G.L. c. 71B:

(a) The private school shall submit to its primary program purchaser completed budget and price calculation forms prepared in accordance with their instructions and using the component prices or price ranges contained in the Component Price Catalogue.

(b) Upon receipt of a private school's budget and price calculation forms, the primary program purchaser must verify that they have been prepared in accordance with their instructions and review them for compliance with the provisions of 808 CMR 1.15. If the forms have not been completed according to their instructions or the costs violate the provisions of 808 CMR 1.15, the primary program purchaser or the provider must make appropriate corrections. The primary program purchase will then submit the forms and the resulting price for review, adjustment and/or authorization by the Pricing Bureau.

(c) A price determined for a new program established and approved under M.G.L. c. 71B shall be subject to review and adjustment after six months based on the provider's actual expenditures. Six months after the effective date of the price or the date the program becomes operational, whichever is later, the provider shall submit actual expenditure reports in accordance with the instructions to the UFR, including an accountant's review report, to the Pricing Bureau with a copy to the primary program purchaser. Within 60 days of receipt of the required materials, the Bureau shall notify the provider of any adjustments to be made to its authorized price.

1.09: continued

(d) Review of Price Determination by the Assistant Commissioner. Any private school or purchasing agency aggrieved by the price determined by the Pricing Bureau under 808 CMR 1.09(2), and desiring a review thereof, may request that the Assistant Commissioner of the Division of Purchased Services, or designee, review the action by submitting a written request for review to the Assistant Commissioner within 15 calendar days of postmark or receipt in hand, whichever is earlier, of the Pricing Bureau's written decision. The written request for review must contain an explanation of the reasons for the request, including a statement describing how the party is aggrieved, and a copy of the Pricing Bureau's decision.

(e) Appeal to the Division of Administrative Law Appeals. Any private school aggrieved by the Assistant Commissioner's action or failure to act under 808 CMR 1.09(2)(d), and desiring a review thereof, may file an appeal under M.G.L. c. 7, s. 4H and St. 1992, c. 133, s. 113 with the Division of Administrative Law Appeals, within 30 days of notice of the Assistant Commissioner's decision under 808 CMR 1.09(3) or of the failure to act. The question on appeal of the decision shall be whether the Division of Purchased Services in taking the action challenged by the aggrieved party has properly applied its regulations.

1.10: Price Determination for Special Cases

(1) Prices for Individuals Providing Services. Purchasing agencies shall comply with the guidelines and instructions developed by the Division in establishing or negotiating a price to be paid under Object Code M01 and MM1 to individuals providing social services. 808 CMR 1.10(3) governs the process for determining individual prices pursuant to an IEP or ISP.

(2) Prices Pursuant to Judicial or Legislative Order. The Division shall authorize rates and prices determined by a method other than those provided for by 808 CMR 1.00 if such other manner is prescribed by a valid order of court of competent jurisdiction or of the Great and General Court of the Commonwealth of Massachusetts.

(3) Individual Prices. The following procedures apply to a request for authorization of an individual price:

(a) The LEA or other purchasing agency shall submit, within ten business days of an approval of, or an amendment to an IEP or ISP which requires the purchase of additional services for a client and additional cost above the authorized program price, a request for an individual price approval to the Division of Purchased Services on a form as required by the Division of Purchased Services. The request shall include a certification by the LEA or purchasing agency that the IEP or ISP as amended requires the additional services and the price requested.

(b) If the services to be provided and the price requested are within the scope of the Division of Purchased Services published list of authorized individual prices and services, entitled "Authorized Individual Prices and Services", the Division shall, within 15 days of receipt of the request, review and approve the request, deny the request or suspend the request for further information. Within 15 days of the receipt of any requested additional information, the Division of Purchased Services shall take action on the request.

(c) If the service to be provided or the price to be paid is not within the scope of the Division's published list of authorized prices and services, the requested price shall be authorized if the following conditions are met:

1. Within ten business days of the approval of, or an amendment to an IEP or ISP, the LEA or the purchasing agency shall submit the following materials to the Division: a completed Division of Purchased Services form, a statement certifying that the IEP or ISP has been amended to include the additional approved services, a statement describing why the published prices are not applicable or are inadequate including the sound business practices used in procuring the services, and the reasons why the proposed price is fair, reasonable and adequate.

1.10: continued

2. Within 30 days of receipt of the materials described in 808 CMR 1.10(c)1., the Division of Purchased Services shall review and authorize the price, deny the request, or suspend the request until the submission of further information. Within 30 days of the receipt of any requested additional information, the Division shall take action on the request.

(d) The Division shall provide written notice of the authorization of a price or denial of a request to the LEA or the purchasing agency and the affected provider.

(e) A price shall be effective as of the date of approval or amendment of the IEP or ISP or the date of any emergency authorization by the LEA or the purchasing agency.

(4) Specialized Placement Price Approval. The following procedures apply to a request for authorization of a specialized placement price:

(a) The Department of Education or other purchasing agency must submit a specialized placement price request packet to the Division of Purchased Services. The packet shall include an approval by the Department of Education or other purchasing agency of the specialized placement, a certification from the Department of Education or purchasing agency that no approved space is available, a certification from the provider that the price to be charged is the lowest price charged to any other purchaser of services, a copy of the provider's price or rate structure, any price or rates established for the provider by states other than Massachusetts and their effective dates, and a description of the price or rate setting process used, if any, to establish the proposed price.

(b) Within 30 days of receipt of the specialized placement price request packet, the Division of Purchased Services shall review the request and authorize the price, deny the request or suspend the request until the submission of further information. Within 30 days of the receipt of the requested additional information, the Division shall take action on the request. The Division shall provide written notice of the authorization of a price or denial of a request to the Department of Education or other purchasing agency and the provider. The price shall be effective as of the date of the approval of the IEP or ISP. Prices established under this provision are subject to the provisions of 808 CMR 1.17.

(5) Special Circumstances. If the determination of a price pursuant to 808 CMR 1.00 would produce an unreasonable result and the provider and primary program purchaser consent, the Division may develop and authorize a price determined in any manner consistent with the Division's authority under St. 1992, c. 133, s. 113, or any successor provision thereto. Where a program does not fall within a particular provision of 808 CMR 1.00, the Assistant Commissioner may authorize a price determined in a manner consistent with the Division's authority under St. 1992, c. 133, s. 113, or any successor provision thereto.

1.11: Price Adjustment - Amendments to Negotiated Program Prices

(1) A purchasing agency, or provider, may seek an adjustment to an authorized negotiated fee-for-service, accomodations purchase or cost reimbursement price during the price year if one of the following conditions is met:

(a) Operating costs change substantially, as a result of a change in either the statutory or regulatory requirements of any governmental agency;

(b) The budget of the purchasing agency substantially decreases or increases as a result of statutory changes therefore making necessary a change in the type or quantity of services purchased;

(c) Off-setting income is substantially different than that anticipated in the calculation of the authorized price;

(d) An increase in operating costs is experienced which is beyond the reasonable control of the provider and which gravely threatens clients' safety and well being;

(e) Utilization is substantially different than that used in the calculation of the authorized price; or

(f) Negotiated costs are substantially different than that anticipated in the calculation of the authorized price.

1.11: continued

(2) A provider seeking a price adjustment shall submit to its purchasing agency, with an informational copy to any secondary purchasing agencies, an amendment form and a price calculation form prepared in accordance with their instructions.

(3) Upon receipt of a provider's completed amendment and price calculation forms, the purchasing agency must review the forms to verify that they have been prepared in accordance with their instructions and to review them for compliance with the provisions of 808 CMR 1.15. To the extent that the forms have not been completed according to their instructions or to the extent costs violate the provisions of 808 CMR 1.15, the purchasing agency or the provider must correct the forms. The resulting price shall be submitted in such format as required by the Division.

1.12: Price Adjustment - Approved Private School Programs Extraordinary Relief

(1) Conditions for Consideration of Extraordinary Relief.

(a) Where an Approved Private School program experiences additional expenses during the price year which it cannot absorb within its authorized price, the school may apply for a price adjustment for the program during the price year if the expenses are necessary to:

1. meet federal or state statutory, or local regulatory requirements, including Department of Education or Office for Children regulations and licensing requirements, not currently included in the authorized price;
2. account for unanticipated emergencies beyond the reasonable control of the provider; or
3. reflect costs attributable to extraordinary decreases in enrollment.

(b) To be eligible for extraordinary relief the conditions described in 808 CMR 1.12(1)(a)1. and 2. must have resulted from unforeseen events occurring after July 1 of the current fiscal year.

(2) Procedure. A request for extraordinary relief must include:

(a) a detailed description of the situation which has caused the school to seek extraordinary relief;

(b) price year income and expenses to date;

(c) a copy of the program's budget for the most recently completed fiscal year using components consistent with those contained in the Uniform Financial Statements and Independent Auditor's Report (UFR) and instructions thereto;

(d) a copy of the program's budget for the current fiscal year using components consistent with those contained in the Uniform Financial Statements and Independent Auditor's Report (UFR) and instructions thereto.

(e) a list of LEAs and state purchasing agencies currently purchasing the program;

(f) a requested price;

(g) substantial evidence that the program s resources are insufficient to cover the expenses for which an adjustment is sought, including substantial evidence that the school has exhausted all programmatic and fiscal resources.

(h) evidence that for each cost for which an adjustment is requested, the school has acted prudently, reasonably and in compliance with the law in incurring such a cost;

(i) federal or state statutory or local regulatory citations supporting the request; and

(j) documentation that the current operating expenses are in compliance with 808 CMR 1.15.

1.12: continued

For the purposes of 808 CMR 1.12, "programmatic and fiscal resources" shall not include unrestricted funds if the school has not voluntarily designated them for this use, but shall include, but not be limited to, surplus revenue as determined by the Division.

(3) Adjusted Price. If the Pricing Bureau, in conjunction with the Department of Education, and the Office for Children, where appropriate, determines that the provider meets the requirements of 808 CMR 1.12(1) and (2) and that extraordinary relief should be granted, the Pricing Bureau shall develop an adjusted price subject to the following conditions:

(a) Any requested adjustments which do not qualify under 808 CMR 1.12(1) shall not be included;

(b) Any requested adjustments which are non-reimbursable costs according to 808 CMR 1.15 shall not be included;

(c) Where a request is pursuant to 808 CMR 1.12(1)(a)3., the Department of Education, and the Office for Children where appropriate, in conjunction with the Approved Private School, must develop a plan relative to utilization of the school and/or placement of its clients;

(d) Any requested adjustments for administrative costs shall not be included;

(e) The Pricing Bureau shall take action under 808 CMR 1.12 within 60 days of receipt of the documentation required under 808 CMR 1.12(2). The Pricing Bureau shall review the request to determine if all materials required under 808 CMR 1.12(2) have been submitted. If the Pricing Bureau's requests under 808 CMR 1.12(3)(e) and 808 CMR 1.05(1) for additional written information and/or documentation to support the request are not fully satisfied within 21 days of the date of the postmark of such requests, extraordinary relief will not be granted.

(f) Where a request is pursuant to 808 CMR 1.12(1)(a)3., the adjusted price shall not exceed an amount equal to the reduction in tuition revenue experienced as a result of the declining enrollment divided by projected current average year-to-date enrollment. The reduction in tuition revenue shall be calculated using the enrollment and price corresponding to the year from which the decline is measured by the Pricing Bureau, based on the unique circumstances experienced by the program, as demonstrated in the request for relief.

(g) Where a request is pursuant to 808 CMR 1.12(1)(a)1. or 2., the adjusted price shall not exceed an amount equal to the difference between the expense for the item in the most recently completed fiscal year and the current year's anticipated expense divided by current average year-to-date enrollment.

(h) No adjusted price shall be effective prior to the date of authorization and no adjusted price shall include expenses incurred prior to the date of authorization.

(4) Review of Price Determination by the Assistant Commissioner. Any private school or purchasing agency aggrieved by the price determined by the Pricing Bureau under 808 CMR 1.12, and desiring a review thereof, may request that the Assistant Commissioner of the Division, or designee, review the action by submitting a written request for review to the Assistant Commissioner within 15 calendar days of postmark or receipt in hand, whichever is earlier, of the Pricing Bureau's written decision. The written request for review must contain an explanation of the reasons for the request, including a statement describing how the party is aggrieved, and a copy of the Pricing Bureau's decision.

(5) Appeal to the Division of Administrative Law Appeals. Any private school aggrieved by the Assistance Commissioner's action or failure to act under 808 CMR 1.12(4), and desiring a review thereof, may file an appeal under M.G.L. c. 7, s. 4H and St. 1992, c. 133, s. 113 with the Division of Administrative Law Appeals, within 30 days of notice of the Assistant Commissioner's decision under 808 CMR 1.08(3) or of the failure to act. The question on appeal of the decision shall be whether the Division of Purchased Services in taking the action challenged by the aggrieved party has properly applied its regulations.

1.13: Price Adjustment - Transfer of Program Ownership

(1) Transfer of Program Ownership. Costs associated with the transfer of program ownership will be recognized if the transfer of program ownership is recognized. A transfer of program ownership will be recognized only when the following criteria exist:

(a) The transfer of program ownership did not occur between related parties;

(b) The transfer of program ownership was made for reasonable consideration;

(c) The transfer of program ownership was a bona fide transfer of all the powers and indicia of ownership;

(d) The transfer of program ownership manifested an intent to sell the assets of the facility rather than implement a method of financing, or increase the transferor's or transferee's cost base; and

(e) In the case of a financing agreement between the transferor and the transferee, the agreement is constructed to effect a complete transfer of program ownership and there is compliance with the terms of such agreement. The Division and/or the purchasing agency reserve the right to evaluate the relationship between the transferor and the transferee and monitor compliance with the agreement to assure a complete transfer of program ownership.

(2) Where there has been a recognized transfer of program ownership on or before the date of full depreciation of the asset in accordance with the service lives in 808 CMR 1.19(2), the reimbursable basis of fixed assets shall be:

(a) For land, the lower of the acquisition cost or the basis allowed the immediate prior owner;

(b) For furnishings, fixtures and equipment, the lower of the acquisition cost or the basis allowed the immediate prior owner reduced by the amount of actual depreciation (or principal payments in lieu of depreciation) included as reimbursable operating costs to the immediate prior owner;

(c) For buildings, the lower of the acquisition cost or 100% of the most recent 100% property valuation reduced by the amount of actuarial depreciation (or principal payments in lieu of depreciation) included as reimbursable operating costs to the immediate prior owner, or an independent appraisal made by a qualified appraiser. For purposes of 808 CMR 1.13, appraisals using the income approach to establish value will not be recognized. In all transfers where the amount of actual depreciation (or principal payments in lieu of depreciation) reimbursed to the immediate prior owner is not known, the new owner shall have the burden of demonstrating the amount, or the amount will be reconstructed by the Division using the best available information.

(3) Where a transfer of program ownership has met the criteria contained in 808 CMR 1.13(1), interest expense to finance the transfer shall be allowed in accordance with the financing agreement subject to the following limitations:

(a) The principal upon which interest expense is allowed shall not exceed the allowable basis of the fixed assets as determined in 808 CMR 1.15(17) and 1.19(2);

(b) The price used to calculate allowable interest will not exceed reasonable prices. The Division will measure reasonableness by comparison with prevailing prices at the time of sale such as the prime rate as published in The Wall Street Journal plus one percent.

(4) Adjusted Price. The prices that have been established may be adjusted to:

(a) Include those costs meeting the requirements of 808 CMR 1.13(2) and (3);

(b) Exclude the prior owner's costs which are superseded by costs included in accordance with 808 CMR 1.13(4)(a).

(5) Effective Date. The effective date of the adjusted price shall be the date when the transfer of program ownership occurs, subject to the review and approval of the purchasing agency.

1.14: Administrative Review

The Division of Purchased Services may conduct a review of programs and authorized prices for good cause, including for but not limited to, the following reasons: failure to incur costs for items included in the initial price approval process or any later adjustment, failure to provide the purchased program services, or failure to implement approved non-programmatic or program changes included in the price year reimbursable operating costs.

(1) Notice of Administrative Review. The Division of Purchased Services shall initiate administrative review by notifying the provider and the purchasing agency(ies) on whose behalf the services are being provided that it intends to conduct an administrative review. The notification shall be in writing and shall include a statement of reasons for the review.

(2) Request for Information. The Division of Purchased Services may require that the provider and purchasing agencies submit books, records and other information necessary for its review. The Division shall send a written request for information and requested material must be submitted to the Division within 21 days of the postmark of the request.

(3) Results of Administrative Review. The Division of Purchased Services shall notify the provider and the purchasing agencies in writing of the results of the administrative review. The review may result in an amendment to an authorized price.

(4) Appeal. A provider or purchasing agency aggrieved by the results of the Division's administrative review may file an appeal with the Division of Administrative Law Appeals under M.G.L. c. 7, s. 4H within 30 days of receipt of notification from the Division of Purchased Services.

1.15: Non-Reimbursable Costs

The Commonwealth in purchasing a social service program will not pay for costs which have been identified in 808 CMR 1.15(1) - (22) as "non-reimbursable costs." A provider should include and identify the non-reimbursable costs in the program budget. The provider should also include the offsetting revenue used to defray the non-reimbursable costs in the program budget. Where it is determined that an authorized price includes(d) non-reimbursable costs because the costs were not identified in the program budget, the costs will be subject to recoupment by the Commonwealth. The following are non-reimbursable costs:

(1) Unreasonable Costs. Any amount paid for goods or services which is greater than either the market price or the amount paid by comparable agencies or governmental units within or outside of the Commonwealth.

(2) Certain Depreciation.

(a) Depreciation for assets to the extent that the assets have previously been depreciated by the provider.

(b) Depreciation which is not computed employing one of the following methods:

1. an historical cost basis;
2. a straight line method;
3. using a schedule of asset service lives pursuant to 808 CMR 1.19(2); or
4. charging one half of the annual depreciation expense in each of the years of acquisition and disposal.

(c) Depreciation on idle, excess, or donated assets or on that portion of an asset's historical cost basis which was paid for from restricted funds.

(d) Depreciation on assets acquired under a capital budget approved by a public agency entirely with public funds and held in trust for the Commonwealth of Massachusetts under the terms of a service contract.

(e) Depreciation which is not computed according to 808 CMR 1.15(2) may be recalculated by the Division according to 805 CMR 1.15.

1.15: continued

(3) Certain Interest.

(a) Any interest paid or accrued upon funds advanced or borrowed from any owner, partner, officer, stockholder, related party, or affiliated or parent organization which exceeds the prime rate plus one percent as published in The Wall Street Journal for similar obligations issued at the same time and for the same amount of time.

(b) Any interest paid or accrued to inter-fund borrowing.

(c) Any interest paid or accrued during the reporting year which is not supported by documentation and certification to demonstrate that payment of interest and repayment of principal are required under a definite schedule, or upon demand, pursuant to a written contract.

(d) Any interest or penalties incurred because of late payment of loans or other indebtedness, late filing or payment of federal and state tax returns, municipal taxes, unemployment taxes, social security, and the like.

(e) Any interest paid or accrued upon funds advanced or borrowed to the extent of income received or accrued from the investment of restricted funds which were available to defray all or a portion of the expenses to which borrowed or advanced funds were applied.

(4) Current Expensing of Capital Items. The cost of acquisition of an asset having a useful life of more than one year and full cost of repair, betterment, or improvement of an asset which adds to the permanent value of the asset or which appreciably prolongs its useful life if the cost exceeds $500.00. A group of related assets, repairs, betterments, or improvements, if the aggregate cost exceeds $500.00, may not be expensed in the reporting period. The Division may depreciate the asset or assets according to 808 CMR 1.15(2).

(5) Certain Salaries and Consultant Compensation. Those salaries, wages, and consultant compensation considered to be excessive by the Division, in light of salaries, wages and consultant compensation of other comparable providers.

(6) Bad Debts. Those amounts which represent uncollectible accounts receivable (whether estimated or actual), and any related legal cost.

(7) Taxes. Federal corporate income taxes and the income related portion of the Massachusetts corporate excise tax.

(8) Certain Costs Paid to a Related Party. Costs applicable to services, facilities, and supplies furnished to the provider by a related party to the extent that such costs exceed the costs to the related party of providing said services, facilities or supplies. Costs to the related party shall be allowable only to the extent that they would be allowable if incurred by the provider. For example, the price published in the Component Price Catalogue or established by the Rate Setting Commission would be allowable. However, where a provider has failed to disclose a related party transaction, only the lower of actual costs, costs established in the Component Price Catalogue or market value will be allowable.

(9) Certain Fringe Benefits.

(a) Fringe benefits determined to be excessive in light of salary levels and benefits of other comparable providers and fringe benefits to the extent that they are not available to all employees under an established policy of the provider. Disparities in benefits among employees attributable to length of service, collective bargaining agreements or regular hours of employment shall not result in the exclusion of such costs.

(b) Employer contributions to pension, annuity, and retirement plans which have not been approved by the Internal Revenue Service.

1.15: continued

(10) Fundraising Expense. The cost of activities which have as their primary purpose the raising of capital or obtaining contributions including the costs associated with financial campaigns, endowment drives, and solicitation of gifts and bequests. However, if the program does not, or cannot reasonably be expected to, receive federal funds, the cost of activities which have as their express purpose the raising of capital or obtaining contributions for Commonwealth programs may be off-set against the revenue generated, except no loss will be reimbursable. To be reimbursable, the provider must maintain accounting systems which adequately segregate those fundraising expenses and revenues associated with Commonwealth purchased programs from other provider programs in accordance with generally accepted accounting principles.

(11) Travel Allowances. Any amount advanced, paid, or accrued to reimburse the provider's employees for the use of a private motor vehicle on official agency business in excess of the amount allowed under the United States Internal Revenue Code ss. 61 and 62.

(12) Non-Program Expenses. Expenses of the provider which are not directly related to the social service program purposes of the provider.

(13) Security Deposits. Money deposited by the provider with a lessor of real property as security for full and faithful performance of the terms of a provider's lease.

(14) Free Care. Costs associated with free service and use.

(15) Research. The costs related to the conduct of grants, contracts, investigations, or programs directed at the understanding, cause or alleviation of physical, mental or behavioral conditions. All costs of salaries, supplies, equipment, and overhead which are directly related to research are to be excluded. Data gathering and program analysis are not considered to be research.

(16) Management Agency Fees. Fees charged to the provider by a management agency which exceed the costs the provider would have incurred had it not entered into a management agreement. For example, the price published in the Component Price Catalogue or established by the Rate Setting Commission would be allowable.

(17) Costs resulting from a change of assets.

(a) Where there has been a transfer of program ownership recognized under 808 CMR 1.13 any costs in excess of costs allowed under 808 CMR 1.13.

(b) Where there has been an exchange of assets between providers and which exchange did not occur between related parties, and was made for reasonable consideration, and was a bona fide transfer of all powers and indicia of ownership, and manifested an intent to sell the assets rather than implement a method of financing or implement an increase of the transferor's and transferee's cost bases, those costs in excess of:

1. For land, the lower of the acquisition cost or the basis allowed the immediate prior owner;

2. For furnishings, fixtures and equipment, the lower of the acquisition cost or the basis allowed the immediate prior owner reduced by the amount of actual depreciation (or principal payments in lieu of depreciation) included as reimbursable operating costs to the Commonwealth;

3. For buildings, the lower of the acquisition cost or 100% of the most recent 100% property valuation reduced by the amount of actual depreciation (or principal payments in lieu of depreciation) included as reimbursable operating costs to the immediate prior owner, or an independent appraisal made by a qualified appraiser. For purposes of this section appraisals using the income approach to establish value will not be recognized.

1.15: continued

(c) In all transfers where the amount of actual depreciation (or principal payments in lieu of depreciation) reimbursed to the immediate prior owner is not known, the new owner shall have the burden of demonstrating the amount, or the amount will be reconstructed by the Division using the best available information.
(d) Where there has been an exchange of assets by a related party, costs in excess of the costs previously allowed to the related party's provider for the exchanged assets.
(e) Where there has been an exchange of assets between providers which exchange is not recognized under 808 CMR 1.15(17)(a),(b) or (c) or such exchange results in a sale-lease back, costs in excess of the transferor's allowable costs for the exchanged assets.

(18) Lobbying Costs. Funds used to compensate or reward lobbyists, consultants or staff to promote, oppose, or influence legislation, or influence the governor's approval or veto thereof or to influence the decision of any member of the Executive branch where such decision concerns legislation or the adoption, defeat, or postponement of a standard, rate, rule or regulation pursuant thereto, and any costs associated with lobbying activities. This prohibition shall apply where the lobbyists, consultants or staff, as any part of their regular and usual employment and not simply incidental thereto, attempt to promote, oppose or influence legislation, approval or veto, or regulations, whether or not any compensation in addition to the salary for such employment is received for such services.

(19) Certain Reporting Year Expenditures. Reporting year expenditures in the operating fund for which restricted funds were available but not used.

(20) Itemized Deductions. All expenses not qualifying as itemized business deductions under the United States Internal Revenue Code.

(21) Litigation Costs. Costs of legal, accounting and consulting services, and related costs, incurred in connection with the prosecution of claims against purchasing agencies or the pursuit of an unsuccessful price appeal are unallowable.

(22) Unallowable Costs unter OMB Circular A-122 and A-21. Costs which are not allowable under OMB Circular A-122 and A-21 are non-reimbursable to programs which receive Federal financial assistance.

1.16: Effect of Pending Appeals

The pendency of an appeal under 808 CMR 1.07(7), 808 CMR 1.08(3), 808 CMR 1.08(4), 808 CMR 1.09(3), 808 CMR 1.09(4), 808 CMR 1.12(3) or 808 CMR 1.12(4) does not limit the Division's right to undertake an audit under 808 CMR 1.05(f) an administrative review of any authorized program price under 808 CMR 1.14, or to take other appropriate corrective action.

1.17: Price Limitation

(1) No program's authorized price may exceed the lowest fee (excluding any fee based on a sliding fee scale) that is charged to the general public or any third party payor.

(2) Except as provided in 808 CMR 1.17(1) no purchasing agency may pay other than the authorized price.

1.18: Reimbursement as Full Payment

Each provider shall, as a condition of acceptance of payment made by one or more purchasing agencies for service provided, accept the program's authorized price, as established by the Division pursuant to 808 CMR 1.00, as full payment and discharge of all obligations for the services so provided. There shall be no duplication or supplementation of payment from sources other than those expressly recognized or anticipated in the computation of the price. Any client resources or third party payments made on behalf of a client, not expressly recognized or anticipated in the computation of the price, shall reduce the amount of the appropriate purchasing agency's obligation for service rendered to the client.

1.19: Reporting Forms, Schedules and Instructions; Schedule of Asset Service Lives; Not-for-Profit Provider Surplus Revenue Retention

(1) The reporting forms referenced in 808 CMR 1.04 and elsewhere, and their schedules and instructions, are incorporated herein. These forms include, but are not limited to, the Uniform Financial Statements and Independent Auditor's Report (UFR), the negotiated budget form, the amendment form and the price calculation form.

(2) Schedule of Asset Service Lives.

(a) The following schedule of asset service lives shall govern the depreciable life to be used in determining the amount of allowable depreciation expense under 808 CMR 1.00 for the asset categories listed. This listing is not exhaustive. The service lives of assets not properly includable within any of the following categories shall be determined in accordance with the Division's guidelines.

Asset Category	Life	Yearly Rate
Buildings		
Type 1 or 2 Construction as classified by the Department of Public Safety in accordance with 780 CMR 402.0 and 403.0	40 years	2.5%
Type 3 or 4 Construction as classified by the Department of Public Safety in accordance with 780 CMR 404.0 and 405.0	27.5 years	3.6%
Building/Improvements	20 years	5.0%
Leasehold Improvements	5 years (or the term of the lease whichever is greater)	
Equipment	10 years	10.0%
Computer Equipment	5 years	20.0%
Life Safety Improvements		
Building or leasehold improvements or equipment acquisitions made solely to satisfy the requirements of any purchasing agency regarding life safety or physical environment. The purpose of such improvements must be documented.	5 years	20.0%
Motor Vehicles	5 years	20.0%
Used Motor Vehicles	3 years	33.33%
Residential Furnishings	3 years	33.33%
Office Furnishings	7 years	14.2%

(b) In circumstances where the useful life employed by the provider differs, because of greater or lesser consumption, from that cited herein, the provider may request of the Division an exception to the cited useful life in the calculation of allowable depreciation. The request must be forwarded to the Division, in writing, and provide adequate documentation to substantiate the request.

1.19: continued

(3) Not-for-Profit Provider Surplus Revenue Retention. If through cost savings initiatives, a non-profit provider accrues a surplus, the annual excess, up to five percent of total revenues, over expenditures for delivering services under all public agreements to provide social services to clients of the Commonwealth, shall be retained by the provider for charitable purposes. The cumulative amount of surplus which can be retained over time, regardless of discretionary provider expenditure from such accumulated surplus, may not in total exceed 20% of the provider's prior year's gross revenues from purchasing agencies. The Division shall be responsible for determining whether a surplus exists and for considering surplus funds in future prices. Surplus funds which fall within the limitations contained in 808 CMR 1.19(3) shall not be used to determine future prices unless a provider voluntarily designates them as available to offset program costs.

1.20: Debarment

Any provider subject to the authority of the Division of Purchased Services under St. 1992, c. 133, s. 113, or any predecessor or successor provision thereto, or 808 CMR 1.00 shall be subject to debarment or suspension pursuant to the provisions of 808 CMR 2.15.

1.21: Severability of the Provisions of 808 CMR 1.00

The provisions of 808 CMR 1.00 are severable, and, if any provision of 808 CMR 1.00 or its application shall be held to be invalid or unconstitutional, such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 808 CMR 1.00 or application of such provisions to providers or fiscal intermediaries under circumstances other than those held invalid.

REGULATORY AUTHORITY

808 CMR 1.00: ST. 1992, c. 133, s. 113

NON-TEXT PAGE

THE COMMONWEALTH OF MASSACHUSETTS

Office of the Secretary of State

Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: 808 CMR 2.00

CHAPTER TITLE: Procedures for the Procurement of Social Services

AGENCY: Division of Purchased Services

SUMMARY OF REGULATION

State the general requirements and purposes of this regulation:

The purpose of 808 CMR 2.00 is to provide all agencies of the Commonwealth with uniform rules and procedures for the procurement of social services for clients from private Providers.

REGULATORY AUTHORITY: St. 1992, c. 133, s. 113; M.G.L. c. 29, s. 29B

AGENCY CONTACT: Tanja Ryden PHONE: (617) 727-7500, ext. 278

ADDRESS: Division of Purchased Services, Department of Procurement and General Services, One Ashburton Place, Boston, MA 02108

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION

If this regulation is adopted as an emergency regulation, state the nature of the emergency.

PRIOR NOTIFICATION AND/OR APPROVAL

If prior notification to and/or approval of the Governor, legislature or others was required, list each notification, approval and date, including notice to the Local Government Advisory Commission:

Notices: Local Government Advisory Commission (Massachusetts Municipal Association and Executive Office of Communities and Development) - August 28, 1992
Social Service Policy Advisory Board - August 28, 1992.

PUBLIC REVIEW

Was notice of the hearing or comment period filed with the Secretary of State published in appropriate newspapers and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period?

Yes [X] Date of public hearing or comment period: October 21, 1992

FISCAL EFFECT

Estimate the fiscal effect on the public and private sectors:

For the first and second years: NONE
For the first five years:
No fiscal effect:

SMALL BUSINESS IMPACT

State the impact of this regulation on small business. Include a description of reporting, record keeping and other compliance requirements as well as the appropriateness of performance versus design standards and whether this regulation duplicates or conflicts with any other regulation. If the purpose of this regulation is to set rates for the state this section does not apply.

NONE

CODE OF MASSACHUSETTS REGULATIONS INDEX

List key subjects entries that are relevant to this regulation:

Social Services
Procurement

PROMULGATION

State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) to repeal, replace or amend. List by CMR number:

This action amends and replaces prior versions of 808 CMR 2.00.

ATTESTATION

The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency. ATTEST:

Signature: _____ Date: 10/23/92

Dana Roszkiewicz, Assistant Commissioner and Deputy Purchasing Agent

Publication *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: 699 DATE: 11/6/92

EFFECTIVE DATE: 11/6/92

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages: CMR: Vol.	*Insert these pages:*
1 - 2	1 - 2
27 - 38	27 - 38.4

A TRUE COPY ATTEST

MICHAEL JOSEPH CONNOLLY
SECRETARY OF STATE

DATE 10/23/92 CLERK KH.

808 CMR 2.00: PROCEDURES FOR THE PROCUREMENT OF SOCIAL SERVICES

Section

2.01: Scope, Purpose, and Authority
2.02: Definitions
2.03: General Provisions
2.04: Competitive Procurement
2.05: Request for Qualifications Procurement
2.06: Non-Competitive Procurement
2.07: Written Agreements
2.08: Subcontracts
2.09: Amendment
2.10: Renewal
2.11: Procurement Cycles
2.12: Fiscal Control
2.13: Payment
2.14: Contract Administration
2.15: Debarment
2.16: Severability

2.01: Scope, Purpose, and Authority

(1) Application. 808 CMR 2.00 shall apply to any Executive Office, Department, Agency, Board, Commission, or Institution of the Executive Department excluding the Legislative and Judicial Branches, the Constitutional Offices, the Public Institutions of Higher Education and independent public authorities. 808 CMR 2.00 does not apply to services provided by another Commonwealth Agency pursuant to 815 CMR 6.00. 808 CMR 2.00 also does not apply to certain services delivered under M.G.L. chs. 71B, 19A or 118E. Excluded entities are strongly encouraged to voluntarily comply with the provisions of 808 CMR 2.00.

(2) Purpose. The purpose of 808 CMR 2.00 is to provide all Agencies of the Commonwealth with uniform rules and procedures governing the procurement of Client services from Providers of social, habilitative, rehabilitative, health, mental health, mental retardation, special education, employment and training, and elder services. 808 CMR 2.00 govern all expenditures under Object Codes M01, MM1, M03, MM3, M05, M06, and M08, (as defined in the Office of the Comptroller's Expenditure Classification Handbook) except for Client transportation services. Procurement of Client transportation services is governed by the Procurement and Contracting Manual for Transportation Services, approved by EOAF on May 1, 1988, or successor documents thereto. 808 CMR 2.00 is intended to ensure uniformity, accountability, equity and efficiency in the award and administration of purchase-of-service contracts and cooperative funding agreements.

(3) 808 CMR 2.00 is promulgated under the authority of M.G.L. c. 29, s. 29B, and St. 1992, c. 133, s. 113, and any successor provisions thereto.

2.02: Definitions

As used in 808 CMR 2.00, unless the context clearly requires otherwise, terms shall have the meanings ascribed below.

Agency Head. The head, or a person duly authorized pursuant to 808 CMR 2.03(11), of any Purchasing Agency, including the Secretary when exercising authority as a Purchasing Agency.

Agreement. A purchase-of-service Contract, Cooperative Funding Agreement, or other form(s), as approved by the Division of Purchased Services, and used to document the terms and conditions of a contractual agreement.

As-Needed Services. Those services which a Purchasing Agency purchases on an as-needed basis from a pool of eligible prequalified Providers. The following conditions must be satisfied:

2.02: continued

(a) all services are paid on a fee-for-service basis;
(b) the number of service units to be purchased from a specific Provider during the fiscal year cannot be accurately estimated or the Purchasing Agency will require services to be delivered at times which cannot be accurately predicted at the time of procurement and hence a Maximum Obligation for any specific Provider cannot be responsibly determined; and
(c) total expenditure for the particular service can be controlled by the Purchasing Agency through its control over referral of Clients to the services or over its Clients' utilization of such services.

Bidder. An individual, sole proprietor, corporation, partnership or organization, business trust or association of two or more persons, or other legal entity, that proposes to provide a program or service(s) on behalf of a Purchasing Agency; a prospective Provider.

Client. An individual eligible for and/or receiving services through a program funded in whole or in part under an Agreement. Also referred to as a Consumer.

Collusion. Two or more Bidders or Providers agreeing to act in a manner intended to avoid or frustrate any of the provisions of 808 CMR 2.00.

Consultant. A contractor who renders professional and/or other services to a Purchasing Agency pursuant to 801 CMR 20.00.

Contract. A legally binding and enforceable Agreement to purchase services from a Provider on behalf of Clients specifically identified, referred or deemed eligible for such services by a Purchasing Agency in consideration of compensation to be paid by the Commonwealth, executed in the name of the Commonwealth by a Purchasing Agency.

Contract Start Date. The date the Secretary approves the expenditure of funds by signing the Service Request Authorization or the start date listed on the Agreement, whichever is later.

Cooperative Funding Agreement. A legally binding and enforceable Agreement to support the availability of services to the general public or a segment of the general population in accordance with legislative or executive policy.

Cost Reimbursement. A payment arrangement under which the Purchasing Agency reimburses the Provider for budgeted costs actually incurred in rendering the services specified in the Agreement, up to a stated Maximum Obligation.

Debarment. The process whereby an organization or individual is determined ineligible to bid for or be awarded any public contract or subcontract for the purchase of any social service program or to provide special education services to a Massachusetts student for a specified period of time to be determined by the Division of Purchased Services, pursuant to the provisions of 808 CMR 1.20 and 808 CMR 2.15.

Division of Purchased Services (hereinafter referred to as Division). The Office established in St. 1992, c. 133, s. 113 within the Department of Procurement and General Services, under the Executive Office for Administration and Finance.

Executive Office for Administration and Finance (hereinafter referred to as EOAF). The Office established by M.G.L. c. 7.

Fee-For-Service. A payment arrangement under which the Purchasing Agency pays the Provider for services at a rate per Service Unit.

Master Agreement. The primary Agreement entered into between a Principal Purchasing Agency and a Provider, which sets out the minimum standard requirements, responsibilities, and terms applicable to all purchase-of-service contractual relationships with the Commonwealth. The Master Agreement, which has no date of termination, may be amended from time to time. Any

2.02: continued

Contracts, Cooperative Funding Agreements and/or other documents that are executed pursuant to 808 CMR 2.00 shall be incorporated therein.

Master Service Agreement. A standard contractual Agreement entered into between the Commonwealth of Massachusetts and a qualified Provider, whereby the Provider agrees to provide a specified service(s) at a specified rate(s) to one or more Agencies of the Commonwealth requiring the service(s) during the period the Master Service Agreement is in effect. State-wide Master Service Agreements are established and overseen by the Department of Procurement and General Services (DPGS). Departmental Master Service Agreements are established and overseen by the Purchasing Agency.

Maximum Obligation. The maximum dollar amount of the Purchasing Agency's Agreement to pay for services under a Contract or Cooperative Funding Agreement.

Minority Provider. A private organization which is owned or controlled by members of a minority group. In the case of a for-profit business, minority groups must have a 51% or more ownership interest in the business. In the case of a non-profit organization, 51% or more of the Board of Directors must be members of a minority group. In accordance with Executive Order 237, the term "minority" is defined to include Black, Western Hemisphere Hispanic, Asian, Native American, or Cape Verdean. Minority providers are certified through the State Office of Minority and Women Business Assistance (SOMWBA).

MMARS. The Massachusetts Management Accounting and Reporting System established by the Comptroller of the Commonwealth of Massachusetts pursuant to M.G.L. c. 7A, s. 7.

Office of the Comptroller (hereinafter referred to as the Comptroller). The Office established by M.G.L. c. 7A.

Primary Program Purchaser. The Purchasing Agency which purchases the greatest portion of a particular program and is responsible for procurement on behalf of all known Purchasing Agencies.

Principal Purchasing Agency. The Purchasing Agency which contracts for the largest aggregate amount of state purchase-of-service Contract obligations with the Provider, or as designated by the Executive Office which oversees the Purchasing Agency's operations, and is responsible for the annual prequalification determination for the Provider.

Proposal. A response by a Bidder to a Request for Proposal, which contains a proposed program narrative and budget, and any attachments required by the Request for Proposal.

Purchasing Agency. The Commonwealth of Massachusetts or any secretariat, board, commission, Department, Division, or Agency of the Commonwealth which is authorized to procure client services under the General Laws of the Commonwealth and which procures services subject to 808 CMR 2.00. Also referred to as Agency.

Program. The delivery of one or more discrete services in an organized and coordinated fashion in order to achieve objectives common to all Program participants.

Provider. Any individual, sole proprietor, corporation, partnership, organization, trust, or association agreeing to provide services to Clients of the Purchasing Agency.

Request for Proposals (RFP). A written document issued by a Purchasing Agency which invites Bidders to submit proposals outlining their qualifications and the program being proposed to serve specified clients on behalf of the Agency. The format of the proposal is indicated in the RFP.

2.02: continued

Request for Qualifications (RFQ). A written document issued by a Purchasing Agency which invites Bidders to submit a Statement of Qualifications to provide specified As-Needed Services or to provide individual services to clients on behalf of the Agency.

Secondary Purchase. A purchase by another Agency of a portion of a Program previously procured by a Primary Program Purchaser pursuant to 808 CMR 2.00.

Secretary. The Secretary of the Executive Office, as established by M.G.L. c. 6A or c. 7, or a person duly authorized by the Secretary, pursuant to 808 CMR 2.03(11).

Service Modification (hereinafter referred to as "SM"). An electronically generated MMARS data entry format used by a Purchasing Agency to modify an encumbrance for a Service Contract which has been previously filed with the Office of the Comptroller.

Service Request Authorization (hereinafter referred to as "SR"). An electronically generated MMARS data entry format used by a Purchasing Agency to request expenditure authorization, or a screen-print of the SR in a format as approved by the Comptroller.

Service Unit. A measurable unit of Program activity, productivity or performance as determined by the Purchasing Agency. The Service Unit may be measured in a unit of time, such as an hour of counseling or a residential day; or by the completion of prescribed procedure, such as a client evaluation; or by any other measurable unit of service. The reservation of all or a portion of a Program's operational capacity for the Purchasing Agency's exclusive use, whether or not the capacity is, in fact, utilized, may constitute a Service Unit if the Agreement so provides.

Statement of Qualifications. A response by a Bidder to a Request for Qualifications.

Unit Rate. The rate per Service Unit.

2.03: General Provisions

(1) Application of 808 CMR 2.00. No Purchasing Agency shall incur any obligation or authorize any payment for any services within the scope and purpose of 808 CMR 2.00 except in accordance with 808 CMR 2.00.

(2) Guidelines. The Division may, from time to time, promulgate policies and procedures to interpret, implement, and provide guidance on 808 CMR 2.00. Any Secretary, subject to the prior approval of the Division, may also issue guidelines that are consistent with 808 CMR 2.00 and any policies and procedures published by the Division, to implement the provisions set forth herein.

(3) Waivers. Upon request of an Agency, the Division may waive the applicability of one or more provisions of 808 CMR 2.00, provided that all such requests and approvals:

(a) are in writing, signed by the Agency Head;

(b) specify the transactions to which such waiver would apply and the provisions of 808 CMR 2.00 to be waived;

(c) include a certification that the Agency has made a good faith effort to comply with said provisions: and

(d) are accompanied by supporting documentation deemed sufficient by the Division to support the special circumstances or the need for relief.

The original waiver shall be kept on file by the Division. A copy of the waiver shall be kept on file by the Agency along with the Agreement or other relevant documents. A copy of the Waiver shall also be filed with the Comptroller. Waivers do not affect the responsibility of a Purchasing Agency to comply with other applicable regulations or statutes.

2.03: continued

(4) Minority Providers. Purchasing Agencies shall take affirmative measures to identify, develop and procure services from Minority Providers as required by 801 CMR 11.00 and Executive Order 237.

(5) Conflict of Interest. The conduct of all parties to a procurement is governed by the Massachusetts Conflict of Interest law, M.G.L. c. 268A.

(6) Fiscal Conduits Prohibited. No Purchasing Agency shall award an Agreement:

(a) to acquire any goods for the Purchasing Agency's use;

(b) to defray the expenses of services rendered by individuals hired or supervised in the daily performance of their work by personnel in the classified service of the Commonwealth; or

(c) solely to acquire payroll or fiscal management for a Program of Client services operated by the Commonwealth or any third party.

(7) Use of Funds for Lobbying Prohibited. No Provider shall use funds, received pursuant to any Agreement, to lobby staff or members of the General Court for additional appropriations to the Purchasing Agency which awarded said Agreement.

(8) Solicitation of Interest and Information. In contemplation of procurement, the Purchasing Agency may prepare a written Solicitation of Interest and Information for publication in the "Goods and Services Bulletin" or other appropriate means of dissemination to interested parties. The solicitation shall describe, in sufficient detail to enable interested parties to respond appropriately, the Clients or type of Clients contemplated and such other information as is consistent with the purposes of the solicitation. In general, the purposes of such solicitation are to determine the extent of potential competition for a contemplated procurement or to solicit the advice of interested parties concerning appropriate procurement specifications. Such a solicitation shall not obligate the Purchasing Agency to issue a Request for Proposals or a Request for Qualifications, pursuant to 808 CMR 2.04 or 2.05, nor shall the failure of any party to respond to the solicitation limit its ability to respond to a subsequent RFP or RFQ.

(9) Debarred Parties. No Purchasing Agency shall award an Agreement to any Provider, or approve a subcontract or assignment to any party, which is currently subject to any state or federal debarment order or determination.

(10) Records Retention. Each Agency shall maintain all records associated with the procurement, including the RFP, the Proposals, and evaluations, and all Agreement documents including justification statements and waivers for a period to be determined by the Records Conservation Board pursuant to M.G.L. c. 30, s. 42.

(11) Signatory Authorization. Any Secretary of an Executive Office or any Agency Head may delegate his/her signatory approval to an authorized representative by annually filing with the Comptroller, on a form to be determined by the Comptroller, a written delegation with appropriate original signatures.

(12) Federal Funding Obligations. The Commonwealth through the Purchasing Agencies and the Division of Purchased Services, shall make its best efforts to notify Providers of the amount of any federal funds furnished by the Commonwealth. Providers are responsible for satisfying any applicable federal financial and program reporting requirements.

2.04: Competitive Procurement

Except as provided in 808 CMR 2.05 and 2.06, all procurement subject to 808 CMR 2.00 shall be conducted in accordance with the competitive procedures set forth in 808 CMR 2.04(1)-(12) and in any policies and procedures published by the Division to implement these provisions. The provisions of 808 CMR 2.04 specify the minimum requirements for competitive procurement and

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are not intended to preclude additional complementary or compatible competitive procedures.

(1) Request for Proposals. The Purchasing Agency shall prepare a written Request for Proposals (RFP). To enable Bidders to prepare a responsive Proposal, the RFP shall provide, at a minimum, the following information: a detailed description of the Clients or type of Clients to be served, the performance objectives for such Clients or for the program as a whole, minimum or mandatory administrative and Program specifications, the selection process and all evaluation criteria to be used by the Purchasing Agency, and the period of time that Agreements will be in effect, subject to the limitations of 808 CMR 2.11. The RFP also shall cite the applicable schedule of prices, price methodology, or other price information, including the Agency designated by law to set Prices for the service(s) being procured. In the case of a Cooperative funding Agreement, the RFP shall further specify the Purchasing Agency's requirements, if any, regarding the amount of the Provider's financial support of the Program.

(2) Solicitation of Interested Parties. The Purchasing Agency shall publish notice of its intent to issue an RFP in the "Goods and Services Bulletin" at least five calendar days before release of the RFP, and may otherwise disseminate notices of availability of the RFP in a manner designed to obtain the widest possible competition. The Purchasing Agency shall provide a copy of the RFP to any interested party, upon request.

(3) Proposals. Bidders' proposals shall be in writing, conforming to the specifications of the RFP. No Bidder may engage in Collusion with any other party for the purpose of inhibiting full, free and fair competition. The prohibition of Collusion shall not prevent collaboration among Bidders in the preparation of joint proposals. A bidder's willingness to voluntarily defray, with its unrestricted funds, a specified portion of the costs of the services to be procured should be clearly stated in its proposal. A bidder's use of unrestricted funds cannot be required by the Purchasing Agency.

(4) Proposal Submission and Receipt. The Purchasing Agency shall allow at least 20 calendar days from the date of release of the RFP for the preparation and submission of proposals and shall record the date and time of receipt of all proposals. Proposals received after the deadline specified in the RFP shall be disqualified.

(5) Qualified Proposals. The Purchasing Agency shall review all timely submissions. Timely proposals which meet all minimum requirements and mandatory conditions specified in the RFP shall be deemed "qualified".

(6) Prequalified Bidders. The Purchasing Agency shall determine whether a Bidder possesses the financial and administrative capacity to fulfill its contractual obligations to the Commonwealth, in accordance with the procedures established by the Secretary pursuant to 808 CMR 2.14(4). Bidders who satisfy minimum standards of financial and administrative capacity shall be deemed "prequalified". Only prequalified Bidders are eligible to receive an award.

(7) Competitive Negotiation. Prior to completion of the proposal evaluation process, the Purchasing Agency, at its discretion, may engage in competitive negotiations with all Bidders who submitted qualified proposals. In this case, each such Bidder shall be notified of the intention to negotiate and shall be afforded an equal opportunity to engage in negotiations. Each Bidder shall be advised in writing of the time specified for the closing of negotiations and all Bidders shall be allowed a reasonable time, following the close of negotiations, in which to submit a revised proposal. In the course of competitive negotiations, the Purchasing Agency may modify its original specifications by furnishing written revisions to each Bidder. However, the Purchasing Agency may not modify its specifications if there is reason to believe prospective Bidders who did not respond to the original RFP would have responded had the RFP included the revised specifications. If Secondary Purchase is anticipated

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in the RFP, the Purchasing Agency shall coordinate all activity pursuant to 808 CMR 2.04(7) with all Secondary Purchasers in a unified manner.

(8) Proposal Evaluation. The Purchasing Agency shall establish a proposal review committee to evaluate all qualified proposals in accordance with the evaluation criteria and process specified in the RFP. Evaluation criteria must be structured to promote and encourage the procurement of services from Minority Providers. If the evaluation is based on a point scoring system, certified Minority Business Enterprises shall be awarded, at a minimum, an additional 5% of the total available points to their total scores. Bidders must submit a copy of their most recent MBE certification with their proposal submission to qualify for the additional 5%. A Purchasing Agency may, at its discretion and as specified in the RFP, request that Bidders participate in oral presentations as part of the evaluation process. Consultants may serve as advisors to Purchasing Agencies in the evaluation of Bidders' proposals but may not represent or act on behalf of a Purchasing Agency in any selection or award.

(9) Awards. Upon completion of the evaluation process, the Purchasing Agency shall make an award to the prequalified Bidder(s) which submit(s) a qualified Proposal which is determined by the Purchasing Agency to be responsive to the RFP and most advantageous to the Commonwealth. The Purchasing Agency shall notify each Bidder in writing of the Agency's decision regarding the Bidder's proposal. In the event that the Purchasing Agency, negotiating in good faith, fails within a reasonable time to reach Agreement with the first prioritized Bidder(s), as described in 808 CMR 2.07(3), the Purchasing Agency may disqualify the first Bidder(s) and award the Agreement(s) to the next prioritized Bidder(s).

(10) Rejection of All Proposals. Upon written notice to all Bidders stating the reason(s) therefor, the Purchasing Agency, at any time, may cancel the procurement or reject all proposals and recommence procurement procedures, when it determines that such action is in the best interest of the Commonwealth.

(11) Debriefing. Upon notification of Purchasing Agency decisions, as described in 808 CMR 2.04(9), any Bidder shall be given an opportunity for a debriefing in which to discuss, with the Purchasing Agency Head or designee, the basis for the award decisions. Requests for a debriefing must be received by the Purchasing Agency within 14 calendar days of postmark of the notification to the Bidder. At the debriefing, the Bidder may discuss with the Purchasing Agency the basis for the award decisions and may examine Proposals, the list of awards, and the evaluation materials and ratings from the review committee(s). A debriefing meeting is a prerequisite to an appeal under 808 CMR 2.04(12).

(12) Administrative Appeal. Any prequalified Bidder aggrieved by an award decision of the Purchasing Agency, and after having a debriefing, may appeal the decision to the Agency Head or designee within 14 calendar days of the debriefing meeting. Any prequalified Bidder aggrieved by a decision of the Agency Head made on appeal, which concerns interpretation or application of any policy or procedure published by the Division of Purchased Services may appeal the decision further to the Assistant Commissioner of the Division or designee within 14 calendar days of postmark of notice of the Agency Head's decision on the original appeal. All appeals shall be in writing and shall specify in sufficient detail the basis for the appeal. All decisions of the Agency Head or Assistant Commissioner shall be rendered in writing, setting forth the grounds for the decision within 90 calendar days of notice of the appeal. Pendency of an administrative appeal shall not preclude the Purchasing Agency from proceeding with the procurement or the execution of an Agreement. Appeals pursuant to 808 CMR 2.04(12) are not subject to the provisions of M.G.L. c. 30A, ss. 10 and 11.

2.05: Request for Qualifications (RFQ) Procurement

(1) Conditions for Request for Qualifications Procurement.
(a) A Purchasing Agency may award multiple Agreements through the RFQ procurement process for As Needed Services that satisfy the criteria contained in 808 CMR 2.02.
(b) A Purchasing Agency may award a Contract for an individual to provide client services (Object Code M01 or MM1) through the RFQ procurement process by following the procedures specified in 808 CMR 2.05(2)(a) - (d) and such additional procedures as necessary to select the most qualified individual provider.

(2) Request for Qualifications (RFQ) Procurement Procedures. All RFQ procurements shall be conducted in accordance with the procedures set forth in 808 CMR 2.05(2)(a)-(g).
(a) Request for Qualifications. The Purchasing Agency shall prepare a written Request for Qualifications (RFQ). The RFQ shall describe in sufficient detail to enable Bidders to prepare a Responsive Statement of Qualifications, the Clients or type of Clients to be served, the type(s) of services to be provided, the performance objectives for the Clients or the Program as a whole, minimum or mandatory Program and cost specifications, if any, the selection criteria to be used by the Purchasing Agency in evaluating Statements of Qualifications, and the period of time during which the RFQ is to be in effect, subject to the limitations of 808 CMR 2.11. The RFQ also shall cite the applicable rate regulation.
(b) Solicitation of Interested Parties. The Purchasing Agency shall publish notice of the availability of the RFQ in the "Goods and Services Bulletin" and may otherwise disseminate notice of the availability of the RFQ in a manner designed to obtain the widest possible response and, upon request, shall provide a copy of the RFQ to any interested party.
(c) Statement of Qualifications. A Bidder's Statement of Qualifications shall be in writing, conforming to the specifications of the RFQ. A Bidder's willingness to voluntarily defray, with its unrestricted funds, a specified portion of the costs of the services to be procured should be clearly stated in its submission. No Bidder may engage in Collusion with any other party for the purpose of inhibiting full, free and fair competition. The prohibition of Collusion shall not prevent collaboration among Bidders in the preparation of joint proposals.
(d) Submission. A Statement of Qualifications may be submitted at any time during the period in which the RFQ is in effect.
(e) Eligibility. The Purchasing Agency shall determine whether a Bidder possesses the financial and administrative capacity to fulfill its contractual obligations to the Commonwealth, in accordance with the procedures established by the Secretary pursuant to 808 CMR 2.14(4). Bidders who satisfy minimum standards of financial and administrative capacity shall be deemed "prequalified". Prequalified bidders who submit a Statement of Qualifications that meets all minimum requirements and mandatory conditions specified in the RFQ shall be deemed "eligible".
(f) Award. All eligible Bidders shall be awarded Agreements in accordance with the requirements of 808 CMR 2.07 except that 808 CMR 2.07(3) shall not apply.
(g) Additional Procedures. The procedures set forth in 808 CMR 2.04(10), (11) and (12) shall also apply to procurements under 808 CMR 2.05(2).

2.06: Non-Competitive Procurement

(1) Conditions for Non-Competitive Procurement. Purchase-of-service Contracts and Cooperative Funding Agreements may be awarded without compliance with the competitive procurement procedures set forth in 808 CMR 2.04, if a condition contained in 808 CMR 2.06(1)(a),(b),(c),(d), or (e) is satisfied.
(a) The service is needed on an emergency or temporary basis to respond to an immediate threat to life, health, welfare, or safety of persons or the protection of property.
(b) A diligent investigation has revealed that there is only one Provider qualified to perform the service by virtue of unique Provider status or capabilities.
(c) A change in an existing Program's administration, staffing or facility

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would significantly impair the achievement of Clients' service objectives or be otherwise detrimental to the Clients' welfare and the Program was originally subject to competitive procurement procedures.
(d) A Secondary Purchaser wishes to purchase a portion of a Program procured by a Primary Program Purchaser pursuant to 808 CMR 2.04.
(e) The Program is procured under Object Code M06, as a formula procurement, because the appropriation is earmarked for a specifically identified Provider or type of Provider, and the amount of or formula for funding is specified.

(2) Non-Competitive Procurement Justification: Approval. In all cases of non-competitive procurement, the Purchasing Agency, prior to encumbering funds, or modifying an encumbrance for that purpose under 808 CMR 2.12, shall develop and keep on file a written justification setting forth in detail the specific grounds for applying 808 CMR 2.06(1). In the case of an emergency or temporary procurement pursuant to 808 CMR 2.06(1)(a), the justification shall, to the extent feasible, indicate the expected duration of the emergency or temporary need, and the non-competitive approval shall be limited to that time period. In the case of non-competitive procurement pursuant to 808 CMR 2.06(1)(c), the justification shall be accompanied by a copy of the Purchasing Agency's written, satisfactory evaluation of each Provider's performance. Justification may be prepared for an individual procurement or a class of procurements having a common ground for exemption from competitive procurement. A copy of the approved justification shall be filed, together with the Agreement or amendment to which it pertains, in accordance with 808 CMR 2.07(6), and the Purchasing Agency shall maintain a separate file of all approved justifications for public viewing. Each Purchasing Agency shall forward to the Division of Purchased Services for review on July 1, October 1, January 1, and April 1 a list of non-competitive procurements approved by the Purchasing Agency for the prior quarter.

(3) Emergency Procurement. A Purchasing Agency may reimburse a Provider for unanticipated emergency services delivered to one or more clients, for a period not to exceed 21 days or for services valued up to $5,000, whichever is less, under Object Code M08, as defined in the Office of the Comptroller's Expenditure Classification Handbook. Emergency procurement is limited to expenditures for direct client services and other expenses specifically required in the delivery of those direct services. If the need for emergency services is anticipated to continue beyond these limits, then the Purchasing Agency shall initiate one of the procurement procedures specified in 808 CMR 2.06, 2.04 or 2.05 prior to the expiration of the emergency procurements limits. However, one limited extension of the emergency procurement limits may be granted by the Division of Purchased Services, if a Purchasing Agency submits a waiver in accordance with 808 CMR 2.03(3).

2.07: Written Agreements

(1) Written Agreement Required. No obligation for services, other than those expenditures under 808 CMR 2.06(3), shall be incurred by a Purchasing Agency except pursuant to a written Agreement in a form approved as prescribed in 808 CMR 2.07(2) and on file for public viewing at the Purchasing Agency. For emergency procurements under 808 CMR 2.06(3), the Purchasing Agency shall maintain such records as may be appropriate to document emergency expenditures, such as bills for services.

(2) Agreement Form Approval. The Division of Purchased Services shall issue standard contractual forms to be used in the award, amendment or renewal of Agreements executed pursuant to 808 CMR 2.00. Except as otherwise provided in 808 CMR 2.00, the form of any written Agreement (including any contractual terms or conditions of general applicability) shall, at a minimum, incorporate the terms specified in 808 CMR 2.07(4) and shall first be approved by the Division.

(3) Negotiation. The Purchasing Agency and the Provider(s) to which the Contract or Cooperative Funding Agreement has been awarded pursuant to 808

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CMR 2.04 or 2.06 may engage in negotiations leading to a written Agreement. In the case of competitive procurement pursuant to 808 CMR 2.04, negotiations shall be limited to terms and conditions not specifically addressed in the RFP and the Provider's written proposal and/or matters which do not significantly alter the terms of the written proposal. In the case of a Purchasing Agency other than the Primary Program Purchaser, negotiations shall be limited to additional terms and conditions which do not materially modify the statement of work, fiscal terms or other terms and conditions agreed between the Provider and the Primary Program Purchaser. In either case, the amount of the Provider's contribution, as stated in its Proposal, pursuant to 808 CMR 2.04(3), of unrestricted funds to defray the cost of services shall not be negotiable.

(4) Terms of Agreement. The written Agreement of the parties shall incorporate the terms set forth in 808 CMR 2.07(4)(a)-(d), and such additional terms and conditions as may be necessary to express the full and complete Agreement of the parties.

(a) Statement of Work and Objectives. The Agreement shall include a full and detailed description of the scope and nature of the Program of services to be rendered by the Provider including any minimum or mandatory Program requirements. The Agreement also shall include specific and measurable criteria and standards that can be quantified and related to the cost data for computation of unit cost and for evaluating the Provider's productivity and performance in relation to desired individual Client outcomes or overall Program objectives.

(b) Fiscal Terms. In the case of Fee-For-Service, the Agreement shall cite the applicable Division of Purchased Services or Rate Setting Commission regulation, specify the Unit Rate and its effective date, and define the Service Unit and any limitations on billable units. Except in the case of Agreements for As-Needed Services or Master Service Agreements, the Maximum Obligation shall also be stated. A Fee-For-Service Agreement may provide that services are to be paid at rates to be determined from time to time by the Division of Purchased Services or Rate Setting Commission. In such cases, the then current rate shall be specified in the Agreement. In the case of Cost Reimbursement, the Agreement shall state the Maximum Obligation and shall incorporate a detailed budget. In the case of a Cooperative Funding Agreement, the Agreement shall state the agreed amount of the Provider's financial support of the Program, if any. In all cases, the Agreement shall specify the method and scheduling of payments.

(c) Required Reports and Applicable References. The Agreement shall describe the content, timing, and where applicable, the format of all reports required of the Provider during the term of the Agreement and specifically cite all applicable statutes, regulations, policies, and procedures.

(d) Duration and Terms of General Applicability. The Agreement shall, at a minimum, specify its starting and ending dates and provide for termination for cause, at any time, upon reasonable notice. In addition, the Agreement may provide for termination without cause, upon proper notice, and for automatic renewal on an annual basis, subject to the limitations set forth in 808 CMR 2.10 and 2.11.

(5) Signatory Authority. The Agreement must be signed and dated where indicated on the Agreement form by persons authorized to bind the parties in contract. The official having statutory authority to act for the Purchasing Agency may delegate this authority to a subordinate, pursuant to 808 CMR 2.03(11). Documentation of the authority of the person signing on behalf of the Provider, such as the Board of Director's Certificate of Vote or a copy of pertinent provisions of the corporate charter, bylaws, trust, or partnership Agreement must be attached to the Agreement or Master Agreement.

(6) Filing. Promptly upon execution, the Purchasing Agency shall file with the Comptroller a complete copy of the Agreement (subsequent amendment or renewal form), together with any attachments and supporting documentation required by these regulations, and any applicable subcontracts in compliance with the applicable filing requirements of the Office of the Comptroller.

2.08: Subcontracts

The prior written approval of the Purchasing Agency shall be required for any subcontracted services which represent a significant portion of the total cost of the Agreement or which represent a significant delegation of financial or programmatic responsibility. The Purchasing Agency shall ensure that, to the fullest extent practical, Providers procure subcontracted services on a competitive basis, take affirmative measures to procure services from subcontractors who are minority business enterprises and/or are owned and operated by persons with disabilities and engage subcontracted services upon contract terms and conditions identical to those applicable to the Provider. Execution of the Agreement shall satisfy the requirement of prior written approval if the subcontractor and its services are identified therein. Notwithstanding such prior approval, the Provider is accountable for the satisfactory performance of its subcontractors and for adequate oversight of its subcontractors to meet state and federal financial and program reporting requirements. Any subcontract for which prior written approval is required but has not been obtained shall be considered void for purposes of reimbursement.

2.09: Amendment

(1) Mutual Agreement. Any Agreement subject to these regulations may be amended by mutual Agreement of the parties provided that the conditions of 808 CMR 2.09(2) and (3) and 808 CMR 2.12 are satisfied and provided that the Agreement, as amended, does not constitute so substantial a change from the specifications of the original procurement and award as to warrant a new procurement.

(2) Written Amendment. All amendments which materially affect the Agreement of the parties must be:

(a) in writing which conforms to the requirements of 808 CMR 2.07(2) and (6);
(b) signed by persons having authority to act for the Purchasing Agency and the Provider as described in 808 CMR 2.07(5);
(c) reference the original Agreement;
(d) specify the terms of the original Agreement to be amended: and,
(e) specify the effective date of the amendment.

(3) Limitation on Increases to Maximum Obligation. An Agreement may be amended to increase the Maximum Obligation up to 125% of the current fiscal year annualized Maximum Obligation, if the Maximum Obligation, as amended, does not exceed 150% of the annualized Maximum Obligation stated in the original Agreement. An Agreement may be amended to increase the Maximum Obligation more than 125% of the current fiscal year annualized Maximum Obligation if either:

(a) the amount of the increase is for additional services which were competitively procured under 808 CMR 2.04, in which case the increase in the Maximum Obligation is not limited; or,
(b) the amount of the increase is for additional services which were non-competitively procured under 808 CMR 2.06 and the original Agreement was procured under 808 CMR 2.06, in which case the Maximum Obligation, as amended, may not exceed 150% of the annualized Maximum Obligation stated in the original Agreement.

2.10: Renewal

(1) Annual Renewal. A Contract or Cooperative Funding Agreement shall automatically be renewed on an annual basis for the period stated in the original Agreement, as specified in 808 CMR 2.07(4)(d), provided that the following conditions are satisfied:

(a) the original award was subject to procurement, at least as often as prescribed in 808 CMR 2.11;
(b) the conditions of 808 CMR 2.12 are satisfied;
(c) the Provider's performance is satisfactory pursuant to 808 CMR 2.14(3);
(d) the provider has been prequalified pursuant to 808 CMR 2.14(4);
(e) the terms of the Agreement specify that all undertakings of the Commonwealth are subject to availability of funds; and

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(f) the maximum obligation of the renewal satifies the requirements of 808 CMR 2.09(3).

(2) Terms of Renewal. An Agreement may be renewed either by its terms or with amendment to its terms.

(3) Written Renewal. The Purchasing Agency shall file a renewal form with the Comptroller in a format approved by the Division of Purchased Services which states the fiscal terms (808 CMR 2.07(3)(b)) to be in effect during the renewal period. In the case of a renewal with amendment, the renewal form shall also specify the terms of the original Agreement to be amended.

2.11: Procurement Cycles

(1) Procurement Cycle Limits. All procurements shall be subject to competitive procedures pursuant to 808 CMR 2.04, Request for Qualifications procedures pursuant to 808 CMR 2.05, or justification of non-competitive procedures pursuant to 808 CMR 2.06 at least as often as follows:

(a) in the case of Agreements exempted from competitive procurement on an emergency or temporary basis pursuant to 808 CMR 2.06(1)(a), according to the timetable set forth in the justification but at least annually;

(b) in the case of all other procurements, at least once every five years.

(2) Procurement Cycle Plans. The Purchasing Agency shall prepare a procurement cycle plan for its competitively procured programs purchased under object codes M03, MM3, and M05 and its As-Needed Services. The plan shall set forth a schedule of procurement for each such program type or service. For As-Needed Services, the plan shall also set forth in detail how the services meet the criteria in 808 CMR 2.02 and how the Agency shall ensure the equitable utilization of all qualified Providers. The plan may take into account the geographic distribution of eligible Providers, the chronological order in which Providers qualified, the relative cost of each qualified Provider's Program, the Purchasing Agency's written evaluations of the services provided by eligible Providers, or such other considerations as may be appropriate to the procurement. The plan shall be submitted to the Division of Purchased Services upon formulation and upon amendment.

(3) Off-Cycle Procurement. A Purchasing Agency may only award an Agreement for a period less than the procurement plan anticipates, by specifying in the original award the reasons therefor. A Purchasing Agency may award an Agreement pursuant to competitive procurement procedures specified in 808 CMR 2.04 for a period exceeding the limitations in 808 CMR 2.11(1) if the request meets the standards established by the Division for off-cycle procurement. The Purchasing Agency must submit written notification of any off-cycle procurement to the Division.

2.12: Fiscal Control

(1) Authorization and Encumbrance. No contractual obligation shall be incurred until the expenditure of funds has been authorized by the Secretary as required by M.G.L. c. 29. s. 29B and adequate funds have been encumbered by the Comptroller for that purpose in accordance with the policies and procedures set forth in 808 CMR 2.12(2)-(3).

(2) Availability of Funds. No Agency shall incur any contractual obligation unless there are sufficient funds available to satisfy the Agreement's stated Maximum Obligation, and the anticipated current year and annualized cost of all such procurements does not exceed the maximum amount, if any, specified in legislative language governing the applicable appropriation account. For these purposes, sufficient funds will be deemed available, if:

(a) in the case of an Agreement to be funded with federal monies, a federal agency has made a binding commitment to the Commonwealth, as evidenced by the release of funds, a letter of credit, or a letter of intent in an amount sufficient to meet the Agreement's Maximum Obligation, and the Agreement satisfies all conditions of the federal award; or

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(b) in the case of an Agreement negotiated prior to the start of a fiscal year in anticipation of appropriation, the Maximum Obligations of all such Agreements are subject to the availability of funds as prescribed by the Secretary of EOAF.

(3) Authorization and Encumbrance Procedures.

(a) Service Request (SR).

1. For each Agreement or group of Agreements the Purchasing Agency shall enter an SR in MMARS in accordance with the instructions published by the Comptroller.

2. The Secretary may indicate his approval of the Agreement by signing the SR, or may delegate his/her approval in accordance with 808 CMR 2.03(11); provided that the authorized signatory shall approve Service Requests only in conformance with the Secretary's instructions as provided herein.

3. No payments shall be made prior to the date the SR and applicable Agreement documents are filed with the Comptroller's Office.

4. For each encumbrance, MMARS automatically confirms the availability of funds sufficient to meet the Maximum Obligation specified in the SR.

5. Upon filing a completed Agreement as described in 808 CMR 2.07(6), the Comptroller shall encumber funds by appropriate entry to MMARS.

(b) Service Modification (SM). Whenever the termination or amendment of an Agreement or approval of rate results in a change to any information required by the Comptroller to be entered in MMARS as a part of the Service Request, the Purchasing Agency shall enter in MMARS a Service Modification, in accordance with the procedures set forth in 808 CMR 2.12(3)(a).

2.13: Payment

(1) Rates. Payment shall be made in accordance with the rates and effective dates certified by the State Agency designated by law to set rates. The Division of Purchased Services shall be responsible for the pricing of all social service programs, excluding any program or service which is reimbursable under Title XIX of the Social Security Act. The Rate Setting Commission, subject to the approval of the Department of Public Welfare, sets rates for Title XIX reimbursable services.

(2) Payment Procedures. Procedures for invoicing and payment shall be governed by the terms of the Agreement consistent with rules and regulations promulgated by the Comptroller, the Secretary, and the Division of Purchased Services.

(3) Payment Limitations.

(a) No obligation for payment shall be incurred on account of services rendered prior to the Contract Start Date.

(b) No payment shall be authorized by the Comptroller prior to the Contract Start Date with the exception that payment may be made for services rendered no earlier than 15 days prior to said date, upon approval by the Assistant Commissioner of the Division, as delegated by EOAF, of a written request for start date retroactivity submitted by the Purchasing Agency and approved by the Secretary in charge of said Agency.

(c) No payment shall be authorized by the Comptroller until:

1. the Agreement and related documents have been filed with the Comptroller as required by 808 CMR 2.07(6);

2. an encumbrance of funds for that purpose has occurred in accordance with 808 CMR 2.12: and

3. the Division of Purchased Services or Rate Setting Commission, as provided in 808 CMR 2.13(1), has certified a rate to the Comptroller and the certified rate agrees with the payment terms of the Agreement and encumbrance.

2.14: Contract Administration

(1) Contract Performance Manager Responsibilities. The Purchasing Agency shall appoint a Contract Performance Manager for each Agreement. The Contract Performance Manager shall be Responsible for monitoring the Provider's compliance with all terms of the Agreement and for assuring satisfactory performance of all undertakings assumed by the Purchasing Agency in the Agreement.

(2) Notice to Providers. The Purchasing Agency shall notify the Provider promptly of the date upon which services may be rendered pursuant to 808 CMR 2.12(3)(a) and shall promptly furnish the Provider with a copy of the fully executed Agreement, any subsequent amendments, and any renewals.

(3) Annual Review. The Purchasing Agency shall at least annually conduct a review of the Provider's performance under the Agreement.

(4) Prequalification of Providers. Each Secretary in consultation with the Division shall develop procedures to annually review the Provider's financial viability, including compliance with Commonwealth corporate and tax requirements. Purchasing Agencies cannot enter into Agreements with Providers who have not been prequalified to conduct social services contracting.

2.15: Debarment

(1) Scope and Application of Debarment. The provisions of 808 CMR 2.15 shall be used when determining whether grounds for debarment or suspension exist and for debarring or suspending a Provider, employee or related party (as defined in 808 CMR 1.02) of a Provider where the grounds for debarment arose prior to the effective date of St. 1991, c. 550 or in those circumstances which do not fall within the regulations of the Executive Office of Administration and Finance developed to implement the provisions of St. 1991, c. 550.

(a) The Assistant Commissioner of the Division of Purchased Services or designee may, where sufficient grounds have been found, determine that a particular Provider and/or an employee or related party of a Provider is ineligible for award of any contract for the furnishing of a social service program for a specified period of time commensurate with the seriousness of the cause(s).

(b) A debarment may include all known affiliates of a Provider. The decision to include a known affiliate within the scope of a debarment shall be made on a case-by-case basis, after giving due regard to all relevant facts and circumstances. An affiliate, entity or individual may not be debarred unless it is afforded prior notice and opportunity for a hearing in accordance with the provision of 808 CMR 2.15(3)(b).

(c) During a period of debarment, offers, bids, proposals or quotes shall not be solicited or considered from debarred organizations or individuals, and Providers shall not sub-contract for services with debarred organizations or individuals on any public contract, including for management services and supplies.

(d) Debarment is a tool to protect the public interest. As such it is not a substitute for remedies provided by contract or for the review of Provider financial viability and compliance with regulatory and statutory provisions provided by prequalification. It is a complementary tool for use in appropriate circumstances.

(e) In appropriate circumstances, the Assistant Commissioner or designee may limit the participation of a Provider in particular programs, for example, a Provider might be prohibited from participating in the program or programs under which the cause for debarment arose, instead of imposing debarment.

(2) Grounds for Debarment. Debarment may be imposed upon an organization or individual upon a finding by the Assistant Commissioner or designee that the following conditions relative to the organization or individual exist:

(a) Conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses:

2.15: continued

1. a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. a criminal offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the organization's or individual's present responsibility as a public contractor;
3. a criminal offense involving neglect or abuse of a client(s) or of a person(s);
4. a violation of state or federal antitrust laws arising out of the submission of bids or proposals;
5. a violation of state or federal laws regulating campaign contributions;
6. a violation of M.G.L. c. 268A;
7. repeated or aggravated violation of any state or federal law regulating hours of labor, prevailing wages, overtime pay, equal pay or child labor;
8. repeated or aggravated violation of any state or federal law prohibiting discrimination;
9. repeated or aggravated violation of any state or federal law regulating labor relations or occupational health or safety;
10. failure to comply with federal or state laws or regulations concerning the payment of any tax or the filing of any required document with the appropriate tax agency; or

(b) Substantial evidence as determined by the Assistant Commissioner or designee of any of the following acts:
1. willful supplying of materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract;
2. willful failure to comply with record keeping and accounting requirements prescribed by law, regulation or contract;
3. failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure to perform or unsatisfactory performance has occurred, or has come to the attention of Commonwealth agencies, within a reasonable period of time preceding the determination to debar, and provided further that such failure to perform or unsatisfactory performance was not caused by factors beyond the organization's or individual's control;
4. a pattern of seriously deficient programmatic and/or administrative performance; or

(c) The organization or individual is subject to a debarment order or determination by another state or the federal government.

(d) In determining whether to debar and/or the period of debarment, all mitigating facts and circumstances shall be taken into consideration. Except as precluded by statute, a debarment may be removed or the period thereof may be reduced by the Assistant Commissioner or designee upon the submission of an application supported by documentary evidence setting forth appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a judgment or conviction, bona fide change of ownership or management, or the elimination of the cause for which the debarment was imposed.

(3) Process for Debarment.

(a) No organization or individual may be debarred unless the Assistant Commissioner or designee has first informed the organization or individual by written notice of the proposed debarment, mailed by registered or certified mail to the Provider's last known address, except where the Assistant Commissioner or designee determines that immediate suspension is necessary to protect the public interest, in which case the suspension shall take effect immediately and notice shall be mailed to the Provider at the earliest opportunity.

(b) The notice shall inform the organization or individual of the reasons for the debarment and shall state that the organization or individual will be afforded an opportunity for a hearing if the organization or individual so requests in writing to the Assistant Commissioner or designee within 14 days of postmark, or receipt in hand, whichever is earlier, of notice.

2.15: continued

(c) A hearing requested under 808 CMR 2.15(3(b)) shall be conducted within 30 days of receipt of the request, unless the Assistant Commissioner or designee grants additional time therefor.
(d) The hearing shall be conducted according to the rules for the conduct of adjudicatory hearings established by the Secretary of EOAF pursuant to M.G.L. c. 30A.
(e) The Assistant Commissioner or designee shall issue a written decision which makes specific findings that there is substantial evidence to support the debarment and the length thereof, in order to protect the integrity of the public contracting or service delivery process.
(f) The organization or individual shall be notified forthwith of the decision by registered or certified mail, and of the right to judicial review.

2.16: Severability

The provisions of 808 CMR 2.00 are severable, and, if any provision of 808 CMR 2.00 or its application shall be held to be invalid or unconstitutional, such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 808 CMR 2.00 or application of such provisions to providers or fiscal intermediaries under circumstances other than those held invalid.

REGULATORY AUTHORITY

808 CMR 2.00: M.G.L. c. 29, s. 29B; St. 1992, c. 133, s. 113.

ATTACHMENT 1:

GENERAL CONDITIONS OF THE MASTER AGREEMENT FOR SOCIAL SERVICE CONTRACTS UNDER 808 CMR 2.00

Commonwealth of Massachusetts
Executive Office for Administration and Finance
Department of Procurement and General Services
Division of Purchased Services
May, 1992

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GENERAL CONDITIONS OF THE MASTER AGREEMENT FOR SOCIAL SERVICE CONTRACTS UNDER 808 CMR 2.00

Approved May 15, 1992
by the Secretary of Administration and Finance

I. SCOPE, INTEGRATION AND EFFECTIVE DATES

This document, the General Conditions of the Master Agreement, is a required contract document for the purchase of a social service program under Division of Purchased Services regulation 808 CMR 2.00 and M.G.L. c. 29, s. 29B.

Consolidated within these General Conditions are contract provisions of general applicability to social service programs. These General Conditions are incorporated by reference and are made a part of the Master Agreement entered into by Providers of social service programs. The provisions of the General Conditions are in addition to the provisions of any Service Contract(s) and any other documents included within the Master Agreement.

The General Conditions approved May 15, 1992 supersede the General Conditions approved by the Secretary of Administration and Finance on March 8, 1990. They are applicable to all Service Contracts, including renewals of Service Contracts procured in prior years, beginning on or after July 1, 1992. A Provider which renews a Service Contract with a Purchasing Agency will be deemed to have agreed to the General Conditions of the Master Agreement which are in effect on the effective date of the renewal contract.

II. DEFINITIONS

The following words used in these General Conditions shall have the meanings ascribed to them below, unless the context requires otherwise:

Client. Individual(s) eligible for and/or receiving services provided under a Service Contract.

Client Record. Any record, file, or document pertaining to a client which contains personal data.

Days. In this document days shall mean calendar days. Should a date fall on a weekend or holiday, the effective date shall be the next business day.

Division of Purchased Services. An agency within the Executive Office of Administration and Finance.

Executive Office. An entity established by M.G.L. c. 6A, s.2 or c. 7, s.2.

Holder of Personal Data. Any person or entity as defined in M.G.L. c. 66A which contracts or has an arrangement with a Purchasing Agency whereby it holds personal data as part or as a result of performing a governmental or public function or purpose.

Master Agreement. The primary contractual agreement entered into between a Principal Purchasing Agency and a Provider, containing standard provisions but having no date of termination. The Master Agreement, which may be amended from time to time, includes the General Conditions, one or more Service Contracts and other documents specifically incorporated therein. It is also referred to herein as the Agreement.

Personal Data. Any information as defined in M.G.L. c. 66A concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular individual.

Principal Purchasing Agency. The Purchasing Agency which, at the time of the execution of the Master Agreement, has contracted for the largest aggregate amount of state Service Contract obligations with the Provider, as designated by the Executive Office which oversees the Purchasing Agency's operations.

Provider. A sole proprietor, corporation, partnership, organization, trust, or association agreeing to provide programs of social services to clients of the Purchasing Agency.

Purchasing Agency. Any executive office, board, commission, department, or division of the Commonwealth of Massachusetts which is authorized to procure social service programs under the General Laws of the Commonwealth and which is party to a Service Contract. Also referred to as Agency.

Service Contract. A legally binding and enforceable agreement to purchase client services from a Provider in consideration of compensation to be paid by the Commonwealth, executed in the name of the Commonwealth by a Purchasing Agency and incorporated into the Master Agreement. In these General Conditions, the term Service Contract also includes contract amendments and renewals.

III. GENERAL

A. COMPLIANCE WITH APPLICABLE STATUTES, REGULATIONS AND MANUALS

In addition to the statutes and regulations cited in the articles of these General Conditions, the Provider shall, in performing the Master Agreement, comply with all applicable provisions of the statutes, ordinances, regulations, policies and manuals cited in the Service Contract.

B. CONFLICT OF INTEREST

The Provider shall not enter into any arrangement whereby the Provider knowingly employs or compensates any present or former employee of the Commonwealth during the term of this Agreement, unless such arrangement is permitted under the provisions of M.G.L. c. 268A.

C. PUBLICATIONS

The Provider shall not disseminate, reproduce, display or publish any report, map, information, data or other materials or documents expressly required or produced in whole or in part pursuant to the Master Agreement or Service Contract, nor shall any such report, map, information, data or other materials or documents be the subject of an application for patent or copyright by or on behalf of the Provider, without the prior written consent of the Purchasing Agency, which shall not be unreasonably withheld or delayed.

If the Provider prepares, publishes or distributes any brochure, periodical or other publication, describing any programs the costs of which are funded at least in part by the Master Agreement or Service Contract, then any such publication shall, unless the Purchasing Agency directs otherwise, contain a prominently displayed statement to that effect [e.g. "This agency and its programs are funded, in whole or in part, by contracts with the (Purchasing Agency)"].

D. ANTI-BOYCOTT COVENANT

The Provider warrants, represents and agrees that during the period the Master Agreement is in effect, neither it nor any affiliated company, as hereafter defined, shall participate in or cooperate with an international boycott, as defined in Sec. 999(b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or shall engage in conduct declared to be unlawful by M.G.L. c. 151E, s. 3. If there shall be a breach in the warranty, representation and

agreement contained in this paragraph, then without limiting such other rights as it may have, the Principal Purchasing Agency shall be entitled to rescind the Master Agreement. As used herein, an affiliated company shall be (a) any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Provider or by a person or persons or a business entity or entities which directly or indirectly owns at least 51% of the ownership interest of the Provider or (b) any business entity which directly or indirectly owns 51% of the Provider.

E. CERTIFICATIONS OF COMPLIANCE

By entering into the Master Agreement and as further set forth in Attachment 3 of the Master Agreement, the Provider warrants, represents, agrees and certifies, under the pains and penalties of perjury, to the following:

1. TAXES

Pursuant to M.G.L. c. 62C, s. 49A, as amended, the Provider has filed all state tax returns, paid all taxes and is in compliance with all laws of the Commonwealth relating to taxes;

2. EMPLOYMENT SECURITY CONTRIBUTIONS (WORKERS' COMPENSATION INSURANCE)

Pursuant to M.G.L. c. 151A, s. 19A, the Provider is in compliance with all laws of the Commonwealth relating to contributions and payments in lieu of contributions to the Employment Security System;

3. DISCLOSURE OF PERSONS WITH FINANCIAL INTERESTS IN THE AGREEMENT

Pursuant to M.G.L. c. 7A, s. 6, the Provider has filed a statement under the pains and penalties of perjury setting forth the names and addresses of all persons having a financial interest in its Service Contract(s) with the Commonwealth. Persons whose interest consists of holding of one percent or less of the capital stock of a corporation need not be disclosed;

4. SECRETARY OF STATE AND ATTORNEY GENERAL FILINGS

Pursuant to M.G.L. c. 156B, s. 109 (business corporations), c. 180, s. 26A (non-profit corporations), c. 181, s. 4 (foreign corporations) or c. 12, s. 8F (public charities), the Provider has filed all required certificates and reports with the Massachusetts Secretary of State and the Massachusetts Attorney General's Office, Public Charities Division;

5. PROVISION OF CHILD CARE

This certification applies only to a Provider initially awarded a Service Contract on or after July 1, 1992. Pursuant to St. 1990, c. 521, s. 7, as amended by St. 1991, c. 329, and 102 C.M.R. 12.00, the Provider is either a "qualified employer" because it has fifty (50) or more full-time employees and has established a dependant care assistance program, child care tuition assistance, or on-site or near-site subsidized child care placements or is an "exempt employer";

6. DEBARMENT

The Provider is not currently debarred or suspended by the Commonwealth of Massachusetts, or any of its entities or subdivisions, under M.G.L. c. 29, s. 29F, as amended, by another state or by the federal government;

7. NOTICE OF CHANGE OF STATUS

If during the term of the Master Agreement, the Provider experiences a change in status relative to paragraphs (1) - (6) above, the Provider shall provide written notice of the change to the Principal Purchasing Agency within ten (10) calendar days of the Provider receiving notice of such change.

Upon notice of a breach in any of the above warranties, representations or agreements, and without limiting other rights it may have, the Principal Purchasing Agency may terminate the Master Agreement.

IV. CONTRACT ADMINISTRATION

A. GENERAL

1. SIGNATORY AUTHORITY

The Master Agreement, and any Service Contracts pursuant to the Agreement, must be signed and dated by persons authorized to bind the parties in contract. The official having statutory authority to act for the Purchasing Agency may delegate this authority to a subordinate; however, a written copy of such delegation must be filed with the Office of the Comptroller. Documentation of the authority of the person signing on behalf of the Provider, such as the Clerk's Certificate of the Director's Vote, or a copy of pertinent provisions of the corporate charter, by-laws, trust, or partnership agreement must be attached to the Master Agreement. Such designation may be changed during the period of this Master Agreement only by written notice and shall constitute an amendment to the Master Agreement.

2. FILING

Upon execution, the Purchasing Agency shall file with the Comptroller a complete copy of the Master Agreement and Service Contracts, as well as any subsequent amendments to these documents.

3. NOTICE

Unless otherwise specified herein, any notice, approval, request or demand hereunder from either party to the other shall be in writing, shall be signed by the authorized signatory or designee of the notifying party, shall be sent by certified mail, postage prepaid, or delivered in hand, and shall be deemed to have been given three (3) calendar days from the date of postmark or when delivered personally.

4. NOTICE OF FEDERAL FUNDS FURNISHED

The Commonwealth shall make its best efforts to notify the Provider of the amount of any federal funds furnished to the Provider by the Commonwealth. The Provider is responsible for satisfying its federal financial reporting requirements.

B. REPORTS

The Service Contract shall specify reports required by applicable statutes, regulations, or authorities, to be submitted to the Purchasing Agency, including the time periods for submission. In addition, the Service Contract may specify such other reports and time periods for submission as are required by the Purchasing Agency to comply with state or federal statutes, regulations, or guidelines or as are needed by the Purchasing Agency to monitor and evaluate the program of services, to substantiate its claims to federal reimbursement for funding provided hereunder, or to plan or assess systems of service delivery.

C. ASSIGNMENT AND DELEGATION

The Provider shall not assign, delegate or otherwise transfer any obligation or interest in the Master Agreement or Service Contract, except as provided in sections IV(C)(1) and IV(C)(2).

1. SUBCONTRACT

No significant portion of the services to be rendered by the Provider pursuant to the Service Contract shall be subcontracted to any other person or entity without the timely prior written consent of the Purchasing Agency, which shall not be unreasonably withheld or delayed. The Provider shall be responsible to the Purchasing Agency for the performance of said subcontractor. A subcontract shall not relieve or discharge the Provider from any obligation or liability under the Master Agreement, including these General Conditions and the Service Contract. Execution of the Service Contract shall satisfy the requirement of prior written approval if the subcontractor and its services are identified in the Service Contract. When more than $25,000 of federal funds which are furnished to the Provider by the Commonwealth are passed down to the subcontractor, the subcontract must contain a provision that the subcontractor will comply with federal single audit, cost principles and administrative requirements of OMB Circular A-133, entitled "Audits of Institutions of Higher Education and Other Nonprofit Institutions," OMB Circular A-122, entitled "Cost Principles for Nonprofit Organizations," and OMB Circular A-110, entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

2. ASSIGNMENT OF RECEIVABLES

Claims for money due or to become due to the Provider from the Purchasing Agency hereunder may be assigned to a bank, trust company or other financial institution, or a court-appointed receiver without prior consent of the Purchasing Agency, provided that notice of any such assignment is furnished promptly to the Purchasing Agency. The Purchasing Agency is responsible for prompt notification of such assignment to the Comptroller.

D. FURNISHINGS AND EQUIPMENT

Title to furnishings and equipment of a value of $500 or more, with a useful life of more than a year, and purchased pursuant to the capital budget of a Service Contract shall vest in and be retained by the Purchasing Agency.

E. AMENDMENT

1. MASTER AGREEMENT

The Master Agreement may be amended only by a written document which is signed by persons authorized under section IV(A)(1). Articles of these General Conditions may be amended only with the prior written approval of the Assistant Commissioner of the Division of Purchased Services or other designee of the Secretary of Administration and Finance.

2. SERVICE CONTRACT

In the event that any condition or circumstance subsequent to the execution of the Service Contract necessitates significant modification to the provisions of the Service Contract, or alters the type or amount of resources required to deliver services, such modification must be agreed to by the Provider and Purchasing Agency and requires a formal written amendment to the Service Contract. Such an amendment must be filed by the Purchasing Agency with the Comptroller.

F. TERMINATION

1. GENERAL

Service Contracts pursuant to the Master Agreement shall terminate on the date specified in the Service Contract, unless renewed as allowed by applicable regulation or policy, or upon any of the events or conditions set forth in sections IV(F)(2) - (6). Termination of the Master Agreement under any condition renders null and void any Service Contracts executed pursuant to the Master Agreement. The Principal Purchasing Agency shall be the party to terminate the Master Agreement on behalf of the Commonwealth. In the event that the Service Contract is to be terminated under sections IV(F)(2) - (6), the Purchasing Agency shall be the party to terminate the Service Contract on behalf of the Commonwealth.

2. EARLY TERMINATION: BREACH OR DEFAULT

a) In the event that either party fails to fulfill its obligations under the Master Agreement or a Service Contract, before the other party may terminate the Master Agreement or Service Contract, such party must specify any alleged default or breach in writing, allowing a reasonable time, but not less than thirty (30) calendar days, for correction thereof. If adequate correction is not made, the party alleging default or breach may subsequently terminate the Master Agreement or Service Contract by sending a notice of termination, containing specification of reasons. at least fifteen (15) calendar days before the date of termination.

b) In the event that a party's default, breach or any intervening casualty poses an immediate threat to the life, health or safety of a client, either party may terminate the Master Agreement or the Service Contract, without opportunity for correction by the other, by giving notice of termination effective immediately. However, within five (5) calendar days of the effective date of termination, the terminating party shall hold a conference with the other, and if it has not done so before, provide a written statement of its reasons for termination. In the case of such immediate termination, responsibility for the transfer of clients is governed by section IV(F)(6)(a).

c) No waiver by either party of any default or breach hereunder by the other shall constitute a waiver of any subsequent default or breach.

3. EARLY TERMINATION WITHOUT CAUSE

Either party may terminate the Master Agreement or a Service Contract without cause upon provision of written notice to the other at least sixty (60) calendar days before its effective date.

4. EARLY TERMINATION: CHANGE IN LAW

In the event that any statute or regulation, which by its own terms or by section III(A) governs performance hereunder, is changed, differently interpreted by a court or other competent authority, or newly enacted, adopted or promulgated, so as to increase the burdens on either party in complying with the terms of the Master Agreement or a Service Contract significantly beyond those existing at the time of execution hereof, the party so burdened may terminate the Master Agreement or Service Contract upon provision of written notice to the other of at least forty-five (45) calendar days.

5. EARLY TERMINATION: ELIMINATION OR REDUCTION OF FUNDING

If there is a reduction, or complete elimination, of funds appropriated for Service Contracts, the Purchasing Agency may terminate the Service Contract by providing notice of termination effective not less than forty-five (45) calendar days after date of notice. In the alternative, the Purchasing Agency may provide a conditional notice of termination together with a proposed amendment to the Service Contract. Any such notice shall provide that the Service Contract will automatically terminate on the effective date specified, which is not less than forty-five (45) calendar days after the date of the notice, unless within thirty (30) calendar days after the date of the notice, the Provider submits to the Purchasing Agency a properly signed copy of the amendment. Unless the Provider makes a timely submission of the amendment or such modified form of amendment as may be agreeable to the Purchasing Agency, or the Purchasing Agency modifies its conditional notice of termination, the Service Contract will terminate as specified in the Purchasing Agency's notice.

6. OBLIGATIONS UPON TERMINATION

Upon termination of the Master Agreement or a Service Contract, whether upon expiration or in accordance with sections IV(F)(2) - (5), the following obligations pertain:

a) TRANSFER OF CLIENTS. If the Purchasing Agency has a continuing responsibility to provide for clients funded under the Service Contract, the Purchasing Agency shall promptly take all reasonable steps necessary to provide alternate services for such clients or remove them from facilities maintained by the Provider hereunder. The Provider shall use its best efforts to provide for the health and safety of such clients for a reasonable period of time, while the Purchasing Agency arranges for their transfer and shall cooperate fully with the Purchasing Agency's efforts to transfer clients.

b) CLIENT RECORDS. Client records maintained pursuant to the Master Agreement or a Service Contract shall remain the property of the Provider, subject to the retention and access provisions of section V(B). However, where the Purchasing Agency has continuing responsibility to provide for the clients funded by the Service Contract, the Provider must, upon request, provide a copy of client records to the Purchasing Agency or to the new provider of services as authorized by the Purchasing Agency. The reasonable cost of such transfer will be borne by the Purchasing Agency.

c) REPORTS AND OTHER DOCUMENTS. All documents, data, studies, and reports related to performance of the Master Agreement or the Service Contract shallbesubmitted to the Purchasing Agency by the Provider, unless the Purchasing Agency directs otherwise.

d) FURNISHINGS AND EQUIPMENT. The termination of the Master Agreement or Service Contract does not affect the Provider's responsibilities with respect to equipment and other property under sections IV(D) and VIII(A)(2).

e) PAYMENT. The Provider shall be paid for all authorized services performed up to the date of termination, subject to article VIII. In addition, if the Purchasing Agency is required by section IV(F)(6)(a) to remove clients from a facility operated by the Provider and fails to remove said clients, the Provider will be reimbursed for all costs reasonably incurred in maintaining such clients in such facility after the date of termination and until such clients are so removed.

f) SUBSEQUENT AUDIT. If the Master Agreement or a Service Contract is terminated without inspection, review or audit, the Purchasing Agency retains the right to conduct an inspection, review, or audit in accordance with article VIII and to disallow reimbursement and/or recover funds if any finding warrants such action. Disallowance and/or recovery will be conducted in accordance with article VIII.

V. SERVICE DELIVERY POLICIES

A. NON-DISCRIMINATION IN SERVICE DELIVERY

1. The Provider shall not deny any services to or otherwise discriminate in the delivery of services against any person who otherwise meets the eligibility criteria for the services on the basis of race, color, religion, sex, age, national origin, sexual orientation, ancestry, disability, status as a Vietnam veteran, or because such person is a recipient of federal, state, or local public assistance or housing subsidies. As part of its commitment to not discriminate on the basis of disability the Provider shall, at minimum, meet the standards applicable to the state under the Americans with Disabilities Act (42 USC 12101 et seq., 28 CFR Part 35).

2. Without limiting the provisions of section V(A)(1), the Provider shall be familiar with and comply with all applicable provisions of federal and state statutes and regulations prohibiting such discrimination, including:

   a) Title VI of the Civil Rights Act of 1964 (as amended)(42 USC s. 2000d et seq.), 45 CFR Part 80;

   b) Section 504 of the Rehabilitation Act of 1973 (29 USC 794), 45 CFR Part 84;

   c) Title II of the Americans with Disabilities Act of 1990 (42 USC s. 12131 et seq.). 28 CFR Part 35;

   d) Block Grant provisions of the Omnibus Budget Reconciliation Act of 1981 (42 USC ss. 300w-7, 300x-7, 708, 8625, and 9906);

   e) Age Discrimination Act of 1975 (42 USC s. 6101, et seq.), 45 CFR Part 91;

   f) Massachusetts Architectural Access Board Act, M.G.L. c. 22, s. 13A; and,

   g) M.G.L. c. 151B, s. 4.

B. CLIENT RECORDS

1. CONFIDENTIALITY

The Provider, as a holder of confidential data, shall comply with the provisions of M.G.L. c. 66A and/or applicable Executive Office or Purchasing Agency statutes and regulations governing the safeguarding, use of, and access to personal or client data. Applicable Purchasing Agency statutes and regulations shall be specifically listed in the Service Contract by the Purchasing Agency.

2. MAINTENANCE

Client record files shall be maintained in accordance with M.G.L. c. 66A, s. 2 and applicable statutes, regulations or manuals cited in the Master Agreement and any specifications set forth in the Service Contract. In addition, the Provider shall maintain records of actual client attendance for each Service Contract funding the program of services. In the case of clients whose services are funded by the Purchasing Agency, the Provider shall, upon request of the Purchasing Agency, forward to the Purchasing Agency a copy of such clients' records.

3. REVIEW

Inspection or review of client records must be conducted in accordance with sections V(D) and VIII(B) and only by persons who are employed or engaged by (a) the federal government with specific responsibilities for oversight, (b) the Executive Office, (c) the Purchasing Agency, (d) the Division of Purchased Services or (e) the Provider, including independent public accountants engaged by the Provider, for the following purposes: (a) in order for the Commonwealth of Massachusetts to obtain federal reimbursement with respect to funds provided to the Provider hereunder, (b) to assure that services are being provided as specified in the Service Contract, (c) to evaluate the quality and effectiveness of those services, (d) to monitor the maintenance of such files, (e) to comply with financial record keeping, client eligibility and service delivery standards, or (f) to collect data to plan or assess systems of service delivery.

4. REMOVAL

Client records may not in the course of any such inspection or review be physically removed from the Provider's premises; nor may such files be photocopied or transcribed in any respect by the agencies named in section V(B)(3), except where the clients' services are being funded by the Purchasing Agency. In this case the Purchasing Agency may photocopy or transcribe files of such clients.

5. LENGTH OF RETENTION PERIOD

Provisions of section VIII(D) shall apply to the retention of client records.

C. REPORTING OF CLIENT ABUSE OR NEGLECT

The Provider shall provide the Purchasing Agency with copies of all legally mandated reports of client abuse or neglect where the alleged abuse or neglect was a direct or indirect consequence of the services rendered under the Service Contract. In addition, the Provider shall comply with all other reporting requirements relative to client abuse and neglect contained in the Service Contract.

D. SITE VISITS FOR PROGRAM MONITORING, REVIEW, AND EVALUATION

1. INFORMAL SITE VISITS

The Purchasing Agency may from time to time make informal visits of reasonable frequency and duration to the site or sites where services are being provided to monitor the provisions of services. Such visits may include examination of client case files, subject to sections V(B)(2) and (3). The Purchasing Agency will make every effort to avoid disruption of services and will provide prior notice of such a visit unless a visit without prior notice is deemed necessary to insure the health and/or safety of those clients whose services are funded by the Purchasing Agency.

2. PROGRAM EVALUATION

On-site program review or evaluation, other than visits under section V(D)(1), shall be conducted in accordance with the procedures set forth in sections VIII(C)(1).

VI. PERSONNEL POLICIES

A. NON-DISCRIMINATION IN EMPLOYMENT

1. The Provider shall not discriminate against a qualified employee or applicant for employment because of race, color, creed, national origin, sexual orientation, ancestry, age, sex, religion, or disability. The Provider shall be familiar and comply with all applicable provisions of state and federal statutes and regulations which prohibit such discrimination, including:

   a) Title VII of the Civil Rights Act of 1964 (as amended)(42 USC section 2000e et seq.), 29 CFR Parts 1601-1608;

   b) Section 504 of the Rehabilitation Act of 1973 (as amended)(29 USC s. 1794). 45 CFR Part 84;

   c) Title I of the Americans with Disabilities Act of 1990, (42 USC s. 12111 et seq.). 29 CFR Part 1630;

   d) Age Discrimination in Employment Act of 1967 (29 USC s. 1621 et seq.), 29 CFR Part 1625;

   e) M.G.L. c. 151B, s. 4;

   f) Equal Pay Act of 1963 (29 USC s. 206 (d));

   g) Massachusetts Executive Order 227, as amended by Executive Order 246; and,

   h) Federal Executive Orders 11246 and 11375.

2. The Provider shall give written notice of its commitments under article VI to any labor union, association, or brotherhood with which it has a collective bargaining or other agreement.

3. This article shall serve as notice to all Providers, including organizations whose members are members of a minority group, women, or persons with a disability, and to associations of such Providers, that it is the policy of the Commonwealth to prohibit discrimination in employment practices by Providers, subcontractors, and suppliers of goods and services as set forth above.

B. AFFIRMATIVE ACTION/EQUAL OPPORTUNITY PLAN

1. DEVELOPMENT OF AFFIRMATIVE ACTION/EQUAL OPPORTUNITY PLAN

The Provider shall develop and observe a policy of affirmative action and equal opportunity in all aspects of employment under the Service Contract. In addition:

a) If the maximum compensation payable under all Service Contracts held with the Commonwealth totals fifty thousand dollars ($50,000) or more per annum, as determined at the beginning of the fiscal year, the Provider shall develop and maintain, in accordance with written guidelines transmitted by the Principal Purchasing Agency to the Provider, an affirmative action/equal opportunity plan. This plan shall specify measures by which the Provider shall undertake such affirmative action programs in the areas of employment, subcontracting with minority business enterprises, and recruitment of members of the communities served by the Provider to the Board of Trustees or Board of Directors of the Provider.

b) The Principal Purchasing Agency, upon the Provider's request, shall provide technical assistance in developing said plan.

2. SUBMISSION OF AFFIRMATIVE ACTION/EQUAL OPPORTUNITY PLAN

The Provider shall submit said plan to the Principal Purchasing Agency's affirmative action/equal opportunity officer in accordance with the time periods specified in the Agency's written guidelines.

C. PERSONNEL POLICIES

1. PROCEDURES

The Provider shall develop and keep on file written personnel procedures which shall include provisions for familiarizing employees with statutes, rules and regulations concerning confidentiality, affirmative action, non-discrimination in service delivery and employment, client rights, and reporting of client abuse, as set forth herein and in the Service Contract. The Provider shall be subject to any standards cited in the Service Contract for the mandatory and/or discretionary disqualification of candidates for direct care positions where the candidates have criminal records and for establishing proof of criminal record information of candidates prior to hire.

2. RECORD KEEPING

The Provider shall maintain personnel records for each employee. These records shall include but not be limited to:

a) Statement of job description and responsibilities;

b) Statement of job qualifications;

c) Resume or job application of employee, including name, address, social security number, education and/or experience, and copies of all licenses and certifications required to perform the job;

d) Other records, including payroll and time and attendance records documenting program assignment and hours and days worked, required by and maintained in accordance with generally accepted accounting principles recommended by the

American Institute of Certified Public Accountants (AICPA), and sufficient to meet the requirements of M.G.L. c. 151 and the Fair Labor Standards Act of 1938, as amended. A Provider receiving federal funds from the Commonwealth shall maintain records in accordance with the standards for financial management systems contained in OMB Circular A-110, Attachment F.

3. INSPECTION

Any Purchasing Agency conducting a duly authorized inspection, review or audit pursuant to Articles IV, V or VIII may have access only to those personnel records which fall within the definitions set forth in sections VI(C)(2)(a) - (d) above, unless further access is granted or required by federal or state statute or regulation.

VII. PAYMENT

A. GENERAL

1. The Purchasing Agency shall pay the Provider for services rendered in accordance with the terms of the Service Contract, at the rate and/or maximum obligation of the Service Contract, provided that the payments under any Service Contract shall not exceed the maximum obligation of that Service Contract.

2. The Provider's partial or complete non-performance of any provision of the Master Agreement or the Service Contract shall be grounds for disallowance or recoupment, pursuant to the provisions of section VII(C).

3. Whenever it is anticipated that any client funds, third-party reimbursement, or other governmental or private funding will be available as a result of the services rendered pursuant to the Service Contract, the Purchasing Agency and the Provider shall incorporate into the Service Contract written provisions clearly setting forth responsibility for the collection of such funds, a projection of the amount of each type of such funds and the way(s) in which such funds are to be used.

B. LATE PAYMENT

In the case of late payments for services rendered by the Provider pursuant to a Service Contract, the Purchasing Agency shall pay late penalty interest to the Provider under the provisions of M.G.L. c. 29, s. 29C, and in compliance with 815 CMR 4.00, except where disallowance or delay of payment has been determined to be necessary in accordance with the provisions of section VII(C).

C. DISALLOWANCE, RECOVERY, OR DELAY OF PAYMENT

1. GROUNDS FOR DISALLOWANCE

In the event that, pursuant to an inspection, review, or audit as set forth in article VIII or section V(D), or otherwise, the Purchasing Agency, determines that the Provider has not provided the services as and to the extent billed, has billed for services to any person who the Provider knew or should have known was ineligible for services according to the terms of the Service Contract, or has received duplicate or otherwise excess payments through error of the Purchasing Agency or the Provider, the Purchasing Agency, after giving the Provider notice of such findings and of its intent to disallow in accordance with section VII(c)(2), may disallow, set-off, or recoup prior payments in the amount of the duplicate or excess billing, including excess amounts paid under a cost reimbursement contract where the Provider served persons whom the Provider knew or should have known were ineligible for services.

2. PROCEDURES FOR DISALLOWANCE

The Purchasing Agency shall notify the Provider immediately upon determination of the grounds for disallowance, shall specify the grounds for disallowance and the amount of payment it proposes to disallow, and shall allow a reasonable period of time, but not less than thirty (30) calendar days, for the Provider to show cause why disallowance should not be made. Should the Provider object to all or any part of the disallowance proposed it may request a hearing under section VII(C)(6) within twenty (20) calendar days of the Purchasing Agency's notice, as specified in section VII(C)(6).

3. METHOD OF DISALLOWANCE

Any disallowance by the Purchasing Agency made in accordance with section VII(C)(2) and section VII(C)(6) shall be carried out by:

a) Deduction of the disallowed amount from a properly completed request for payment for services rendered pending with the Purchasing Agency or set-off of such disallowance from any monies owed to the Provider by the Purchasing Agency; provided, that the Purchasing Agency shall promptly submit to the Provider a written accounting of such disallowance or set-off; or

b) Repayment by the Provider in the amount of such disallowance within ninety (90) calendar days following request, or such longer period as the Purchasing Agency and Provider may mutually determine.

4. GROUNDS FOR DELAY OF PAYMENT

In the event that the Purchasing Agency determines that the Provider has failed to submit to the Purchasing Agency any report required by and within the time period indicated in the Service Contract, or has unreasonably refused to permit inspection, review, or audit according to the provisions of section V(D)(2) or section VIII(B), the Purchasing Agency may delay payment of a voucher or invoice, after giving the Provider notice of such failure or refusal and of its intent to delay as provided in section VII(C)(5).

5. PROCEDURE FOR DELAY OF PAYMENT

The Purchasing Agency shall notify the Provider that it intends to delay action on a pending request for payment and shall allow a reasonable period of time, but not less than thirty (30) calendar days, for the Provider to show cause why such delay should not occur. The Purchasing Agency may delay payment on such voucher until it receives such report(s) or begins such inspection, review, or audit. If the Provider objects to such a delay and requests a hearing on the matter, the Provider must initiate action within twenty (20) calendar days of notice in accordance with section VII(C)(6). The Purchasing Agency may delay payment pending the outcome of the hearing.

6. HEARING BEFORE THE PURCHASING AGENCY

The Provider shall, upon filing written notice within twenty (20) calendar days after receipt of notice under section VII(B)(2) or (5), be entitled to an informal hearing before the Purchasing Agency Head or a designee with respect to the proposed disallowance or delay. If the Purchasing Agency Head makes such a designation, the designee shall not be the person or one of the people who made or participated in the making of the decision under review. Within fifteen (15) calendar days of notice the Purchasing Agency Head or designee shall hold a hearing and allow the Provider to present all relevant information. The Purchasing Agency Head or designee shall, within ten (10) calendar days thereafter, reach a decision on such disallowance or delay and shall communicate such decision in writing to the Provider.

VIII. CONTRACT AUDIT

A. MAINTENANCE OF RECORDS

1. PROVIDER FINANCIAL RECORDS

a) The Provider shall keep on file data as are necessary to satisfy applicable reporting requirements of the Division of Purchased Services, the Rate Setting Commission of the Commonwealth, or any successor agencies, and financial books, supporting documents, statistical records, and all other records which reflect revenues associated with and costs incurred in or allocated to any program of services rendered under the Service Contract. If the Provider receives any federal funds from the Commonwealth, the Provider shall also keep data necessary to satisfy OMB Circular A-133, entitled "Audits of Institutions of Higher Education and Other Nonprofit Institutions." The Provider shall maintain records of all types of income or other funds pertaining to the program paid to the Provider by every source, including from each client. Books and records shall be maintained in accordance with generally accepted accounting principles as set forth in the American Institute of Certified Public Accountants (AICPA) Industry Audit Guide for Audits of Voluntary Health and Welfare Organizations. If a Provider receives federal funds, the Provider shall also maintain books and records in accordance with OMB Circular A-110, entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" and OMB Circular A-122, entitled "Cost Principles for Nonprofit Organizations."

b) Any nonprofit Provider which receives more than two hundred and fifty thousand dollars ($250,000) in gross revenue during its fiscal year shall prepare annually a set of financial statements in accordance with generally accepted accounting principles as set forth in the American Institute of Certified Public Accountants (AICPA) Industry Audit Guide for Audits for Voluntary Health and Welfare Organizations and audited independently in accordance with generally accepted governmental audit standards (GAGAS) as set forth in the US General Accounting Office's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" for that fiscal year, and shall submit it to the Division of Purchased Services and the Principal Purchasing Agency on or before the fifteenth (15th) day of the fifth (5th) month after the fiscal year's end, or such later date as the Division of Purchased Services or the Principal Purchasing Agency, as appropriate, may allow. Unless otherwise exempted or excepted, these statements shall be in the form of the Uniform Financial Statements and Independent Auditor's Report (UFR). For purposes of this section, gross revenue shall not include any gains or losses from the sale of a capital asset. In addition, any nonprofit Provider receiving in excess of $25,000 of federal funds from the Commonwealth must comply with the single audit provisions of OMB Circular A-133, entitled "Audits of Institutions of Higher Education and Other Nonprofit Institutions."

c) Any nonprofit Provider which receives more than one hundred thousand dollars ($100,000) but less than two hundred and fifty thousand dollars ($250,000) in gross revenue during its fiscal year shall prepare annually a set of financial statements in accordance with generally accepted accounting principles as set forth in the American Institute of Certified Public Accountants (AICPA) Industry Audit Guide for Audits for Voluntary Health and Welfare Organizations and reviewed by an independent auditor in accordance with AICPA Statements on Standards for Accounting and Review Services Nos. 1 and 2 for that fiscal year, and shall submit them to the Division of Purchased Services and the Principal Purchasing Agency on or before the fifteenth (15th) day of the fifth (5th) month after the fiscal year's end, or such later date as the Division of Purchased Services or Principal Purchasing

Agency, as appropriate, may allow. Unless otherwise exempted or excepted, these statements shall be in the form of the Uniform Financial Statements and Independent Auditor's Report (UFR). For purposes of this section, gross revenue shall not include any gains or losses from the sale of a capital asset. In addition, any nonprofit Provider receiving in excess of $25,000 of federal funds from the Commonwealth must comply with OMB Circular A-133, entitled "Audits of Institution of Higher Education and Other Nonprofit Institutions."

d) Any taxable "for profit" Provider which receives more than one hundred thousand dollars ($100,000) in gross revenue during its fiscal year shall prepare annually a set of financial statements in accordance with generally accepted accounting principles for the industry in which it operates and must be audited independently in accordance with generally accepted governmental audit standards (GAGAS) as set forth in the US General Accounting Office's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" for that fiscal year, and shall submit it to the Division of Purchased Services and the Principal Purchasing Agency on or before the fifteenth (15th) day of the fifth (5th) month after the fiscal year's end, or such later date as the Division of Purchased Services or Principal Purchasing Agency, as appropriate, may allow. Unless otherwise exempted or excepted, these statements shall be in the form of the Uniform Financial Statements and Independent Auditor's Report (UFR). For purposes of this section, gross revenue shall not include any gains or losses from the sale of a capital asset.

2. INVENTORY

Any Provider which is in possession of furnishings or equipment to which the Purchasing Agency has title shall label, maintain, and keep on file a written inventory of all such property. Said inventory shall contain the source of funding, the description and location of each item as well as such other information as may be required by the Purchasing Agency. Upon completion of performance hereunder, the Provider shall retain furnishings and equipment subject to section IV(F) for its use in performance of health, social or rehabilitative services and shall continue to maintain a written inventory unless and until, following reasonable advance notice, the Purchasing Agency removes such furnishings and equipment. Removal shall be at the Purchasing Agency's expense. Any Provider in possession of furnishings or equipment purchased with federal funds furnished by the Commonwealth shall comply with the property management standards of OMB Circular A-110, Attachment A.

B. INSPECTION, REVIEW, AND AUDIT OF RECORDS

The Provider shall hold available at all reasonable times during the business day, for the period set forth in section VIII(D) below, at the premises where they are normally kept, and shall make reasonably available within the Commonwealth the fiscal and administrative records specified in section A, and other compilations of data which pertain to the provisions and requirements of the Master Agreement or Service Contract, for inspection, review or audit by political subdivisions of the federal government, the Governor, the State Auditor, the Division of Purchased Services, the Massachusetts Rate Setting Commission, or any successor agencies, the Executive Office, the Purchasing Agency, or their authorized representatives or designees.

C. INSPECTION, REVIEW AND AUDIT PROCEDURES

Inspection and review of records by the Purchasing Agency may be conducted in accordance with Purchasing Agency policy. Audit of records by the Purchasing Agency shall be conducted according to the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions", as published by the United States General Accounting Office, and may be conducted only in accordance with the following procedures:

1. Except when the Purchasing Agency has reasonable grounds to suspect fraudulent or criminal activity or material breach of the Master Agreement or Service Contract, it shall give advance written notice to the Provider of at least fifteen (15) calendar days from postmark, of the purpose, scope, expected duration, written instrument(s) expected to be used in and person(s) conducting inspection, review or audit. The Purchasing Agency shall have the right to inspect documents in addition to those listed in the original notice if, while conducting said inspection, review, or audit, the Purchasing Agency deems it reasonable and necessary to do so.

2. The Purchasing Agency shall conduct all inspections, reviews or audits, with the minimal possible disruption to the provision of services hereunder.

3. Upon its completion of a preliminary report of any inspection, review or audit, the Purchasing Agency shall forward a copy thereof to the Provider for comment and shall afford the Provider an exit conference for discussion of the preliminary report. Any comments submitted by the Provider within twenty (20) calendar days of the exit conference shall be considered by the Purchasing Agency in its preparation of, and shall be included in, the final report.

D. LENGTH OF RETENTION PERIOD

1. Unless specifically governed by Purchasing Agency regulations, all records specified above, shall be kept for a period of six (6) years or for the period for which records of the same type must be retained by state agencies pursuant to statute or the guidelines promulgated by the Records Conservation Board, whichever period is shorter. All retention periods start on the first day after termination of the Service Contract. In addition, any Provider receiving federal funds from the Commonwealth must comply with the retention and custodial requirements for records contained in OMB Circular A-110, Attachment C.

2. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

3. In order to avoid duplicate record keeping, the Purchasing Agency may make special arrangements with the Provider to retain any records which are continuously needed for joint use. The Purchasing Agency may accept transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Purchasing Agency, the retention requirement is not applicable to the Provider.

AUDIT RESOLUTION POLICY UNDER 808 CMR 1.00

Commonwealth of Massachusetts
Executive Office for Administration and Finance
Department of Procurement and General Services
Division of Purchased Services
June, 1992

Document Number: DPS-A025

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DIVISION OF PURCHASED SERVICES

AUDIT RESOLUTION POLICY

Effective for audits of providers with fiscal years that begin on or after January 1, 1990

The past three decades have seen a substantial increase in the number and dollar amount of government-funded programs, including large expenditures of public monies to solve critical social problems in the United States. This increase has brought with it a demand for full accountability and efficient management systems and procedures on the part of governmental organizations and providers who have been entrusted with public funds. Government managers and providers that deliver programs of service have been charged with the responsibility to effectively manage government-funded programs.

Auditing has become an important element of government accountability and a method for improving management systems and procedures. To this end, there has been a national move to adopt Generally Accepted Government Auditing Standards (GAGAS) for auditing publicly funded programs. Through findings and recommendations contained in audits conducted in accordance with GAGAS, auditors convey a wide variety of ways to improve management systems and procedures related to programs funded with public monies. Audit findings and recommendations are intended to show the report user and the provider how government-funded programs may be more responsive to citizen needs at less cost to taxpayers.

Acceptance of a recommendation by an auditee does not ensure results; effective implementation of recommended action does. Government Auditing Standards recognize that follow-up and continued attention through monitoring is required until results are achieved.
This continued attention through monitoring until results are achieved is commonly termed "audit resolution."

The Division of Purchased Services (DPS) has developed the following Audit Resolution Policy to address the findings and recommendations contained in GAGAS audits of publicly funded social service programs that have been conducted by the Office of the State Auditor, Federal agencies, and Independent Auditors.

Independent Auditors must conduct audits in accordance with GAGAS when meeting the requirements of the Uniform Financial Statements and Independent Auditor's Report (UFR) and the single audit provisions of federal OMB Circular A-133.

The second and third supplemental reporting standards of GAGAS for government financial audits require that the auditor's reports disclose all material instances of noncompliance and material weaknesses in the entity's internal control structure. Nonmaterial instances of noncompliance and nonreportable weaknesses in the entity's internal control structure are separately reported to the provider's management, preferably in a management letter. The auditor must utilize the GAGAS definition for materiality when considering and weighing the evidence in influencing the auditor's decision concerning the auditor's judgments, conclusions, audit opinion and findings. Materiality is defined by GAGAS as follows:

> "The magnitude of an omission or misstatement of accounting information that in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement. Materiality judgments are made in light of surrounding circumstances and necessarily involve both quantitative and qualitative considerations."

The DPS resolution policies dictate that auditor's reports and the resultant resolution recommendations be distributed to responsible government officials and providers that possess the statutory or regulatory authority to take corrective administrative actions. This is intended to be consistent with the requirements of Standards for Audit of Governmental Organizations, Programs, Activities, and Functions ("Yellow Book") promulgated by the Comptroller General of the United States, the Federal single audit provisions of OMB Circular A-133 and other standards applicable to governmental auditors.

In order to ensure the implementation and maintenance of sound management practices, DPS requires that the principal purchasing agency (PPA) and the provider organization enter into a written corrective action plan (CAP). Special education provider organizations that do not deliver services to agencies of the Commonwealth will be assigned a PPA by the Department of Education from one of the cities or towns purchasing services from the provider. The CAP is intended to improve management systems and procedures by eliminating administrative deficiencies (e.g., poor or nonexistent books or records, lack of internal controls, inadequate safeguards of client funds, etc.). This plan (Attachment 1) must specify the manner in which each deficiency will be addressed and the date by which that action will be completed, and it must indicate that it has been approved by the board of directors and must be signed by the provider's authorized signatory and the principal purchasing agency's representative. The status of corrective action on prior audit findings must be included in the written corrective action plan.

In the case of an OMB Circular A-133 audit, the corrective action plan must be forwarded to DPS because it, together with a copy of the audit, must be sent to the central clearing house designated by the Office of Management and Budget (Bureau of the Census).

Federal cognizant and oversight agencies may review written corrective action plans and audits, and issue management decisions that include additional actions necessary to resolve the findings. Each plan is reviewed by the auditor in subsequent years and deficiencies that have not been eliminated are written as findings in the report, as part of the follow-up requirements of GAGAS, to insure that the plan has been adequately implemented and that the deficiencies have been eliminated. The resolution process concludes when all deficiencies have been eliminated.

In addition, the auditor's reports may also include noncompliance findings that need to be incorporated into the CAP and referred to appropriate oversight agencies for corrective action. Noncompliance findings describe a failure to follow requirements, or a violation of prohibitions, contained in statutes, regulations, contracts, grants, and binding policies and procedures governing the provider's conduct. Administrative deficiencies may also be considered noncompliance findings when the administrative procedure is required by statutes, regulations, contracts, grants, and binding policies and procedures. Noncompliance audit findings which affect reimbursement paid to provider organizations (e.g., non-reimbursable costs, overbilling, underspending, undocumented expenses, over and/or underutilization) are routinely referred to DPS and/or the Rate Setting Commission for rate adjustments or other action, or to purchasing agencies for reimbursement adjustments or budget renegotiation. Other noncompliance matters are referred to the state or federal governmental agency which has jurisdiction over the issue.

Purchasing agencies are responsible for resolving noncompliance findings that are noted in the CAP and relate to the agency's purchased services. All other noncompliance findings shall be resolved by the PPA (e.g., Internal Revenue Service). The PPA is responsible for referring noncompliance findings not related to purchasing agencies to the appropriate oversight agency for corrective action (e.g., Internal Revenue Service). In addition, the PPA coordinates Commonwealth purchasing agency oversight efforts to resolve and eliminate noncompliance deficiencies that relate to the purchased services.

All resolution policies and procedures contained herein pertain only to audit findings that are of a material and reportable nature (resulting from testing and reporting compliance with the existing standards in auditor's reports) from audits conducted in accordance with Generally Accepted Government Auditing Standards.

The following portion of the resolution policy prescribes the manner in which audit findings are resolved. Questions concerning any aspect of this policy may be directed to the Bureau of Audit at (617) 727-7500. Information and assistance regarding accounting principles and audit standards and the requirements associated with federal and state laws and regulations may also be acquired by contacting the Bureau of Audit.

A summary of present DPS resolution policies includes the following:

	Condition	Referred To
1.	Administrative Deficiencies	Purchasing Agencies
2.	Non-performance of Services	Purchasing Agencies
3.	Conflict of Interest	State Ethics Commission Inspector General
4.	Non-Reimbursable Costs/Expenses	DPS/Rate Setting Commission Purchasing Agencies
5.	Failure to File Documents Required by Law	Secretary of State Attorney General State Taxing Agencies Federal Taxing Agencies
6.	Failure to Make Payments Required by Law	State Taxing Agencies Federal Taxing Agencies Attorney General
7.	Fraud	Attorney General Inspector General
8.	Misconduct of State Employee	State Ethics Commission Attorney General Inspector General
9.	Non-Compliance	DPS/Rate Setting Commission Purchasing Agencies Inspector General
10.	Overbilling	DPS/Rate Setting Commission Purchasing Agencies Inspector General
11.	Underspending	DPS/Rate Setting Commission Purchasing Agencies
12.	Undocumented Expenses	DPS/Rate Setting Commission Purchasing Agencies Inspector General
13.	No Material Finding	File Closed

Reimbursement Findings

I. Recovery of Funds Under All Contracts

A. Non-Performance

Non-performance under contracts means services were not delivered or services delivered did not meet standards established by the purchasing agency in the contract. In the event of non-performance, recovery of funds is appropriate. Such cases will be resolved through negotiations between the provider and the purchasing agency. Once a determination of non-performance is made, the focus of discussion should be on the manner of resolution which is most appropriate under the circumstances and, if not already determined, the value of services which were not rendered.

B. Fraudulent Billing

All reimbursements to a provider which have been determined to be supported by fraudulent documentation will be disallowed. Funds fraudulently acquired must be promptly recovered in full and returned to the Commonwealth. All such cases will be referred to the Attorney General and the Inspector General.

C. Undocumented Reimbursement

In the present system of purchased social services in Massachusetts, under all contracts regardless of the reimbursement mechanism, providers must maintain appropriate documentation of actual allowable expenses, revenues, and service provision in accordance with the requirements established by federal and state regulations and laws, the General Conditions, the contract, the applicable rate setting regulations and the policies of the purchasing agency. In the event of a determination of a failure to maintain adequate and appropriate documentation, depending upon the circumstances, recovery of funds or rate adjustment may occur as a basis for resolution, in accordance with the reimbursement mechanism. In the case of contractual relationships other than cost reimbursement contracts, other evidence, in the form of credible and convincing alternative documentation, that the services in question were actually provided and costs were incurred will be considered. In such cases, however, in order to prevent reoccurrence of record keeping deficiencies in subsequent years, satisfactory written resolution of all such audit determinations must have been reached.

D. Non-Reimbursable Expenses

Under all contracts, reimbursement to providers is permitted only for actual allowable expenses, as defined in contract requirements, General Conditions, rate setting requirements, and/or purchasing agency requirements. Depending upon the circumstances, actual expenses for unallowable items may be subject to recovery or rate adjustment, in accordance with the reimbursement mechanism.

E. Billing Errors

Errors in invoices submitted to the Commonwealth for reimbursement, which do not constitute fraud, will be referred to the purchasing agency to be rectified in the most appropriate manner possible under the circumstances.

F. Underutilization of Staffing Resources

This provision is intended to be utilized when there are indications that staffing may not have been provided as agreed upon in the original contract or amendment documents as needed to carry out the program of services. For purposes of this section, emphasis should be placed upon the review of staff credentials and full time equivalents (FTE) provided. Review of the cost of staffing shall take into consideration payroll, the cost of relief staff and consultants, compensated overtime performed by existing staff, related taxes, related benefits, and the like.

For purposes of resolving audit findings concerning reimbursement, a determination that any program or cost category for which spending as it relates to staffing during the period was below 90 percent of the funds budgeted or allocated for staffing in any portion of the contracts funding such program or cost category, shall be referred to the purchasing agency for review of actual service delivery and quality levels.

Purchasing agencies are responsible for resolving the deficiency by determining if service delivery requirements, performance standards and/or minimum staffing or program standards have been met or need to be revised. Adequate resolution of deficiencies include the following:

- No action is taken because staff vacancy was due to turnover and the position was subsequently filled.

- Assist the provider through a corrective action plan that utilizes state resources to fill necessary vacant positions, when staff vacancies are the only deficiency and the provider has made a good faith effort to attain the necessary staffing during the year.

- Establish corrective action plan to meet minimum service delivery requirements, performance standards, staffing, and program standards that have not been met and are needed.

- Revise minimum staffing or program standards and reduce the rate of payment for staffing and program standards that are not needed.

- Recover funds from provider when no effort was made to staff programs with employees possessing appropriate credentials, to fill vacant positions, or to amend contracts for positions that are not needed.

II. Underspending or Overspending in Unit Rate Contracting

A. Class Rate Contracting

Under class rate contracting, the provider is paid a per-unit rate which has been established by the Rate Setting Commission (RSC) for all programs offering a particular type of service. In the event of a determination of any variance between reimbursement received under contracts funded by class rates and a provider's actual allowable expenses associated with such contracts, the information will be reported to the Rate Setting Commission for informational purposes. If any variance is greater than five percent or $50,000, whichever is less, RSC will be requested to resolve the determination by considering the relevance of this information for inclusion in future class rate determinations. If the variance is less than five percent or $50,000, no response will be required. All such variances will also be reported to the purchasing agency for informational purposes.

B. Non-Negotiated Cost-Based Unit Rate Contracting

Under these contracts and agreements (Chapter 766 Schools), the provider is paid a per-unit rate which has been established solely by DPS for a specific program based on the costs of the program. In the event of a determination of any variance between reimbursement received under contracts or payments funded by such prices and a provider's actual allowable expenses associated with such contracts and payments, the issue will be resolved in the same manner specified above for Class Rate Contracting.

In any case resolved pursuant to section II (A) or (B) above, if upon further review DPS finds that fraudulent billing, undocumented reimbursement, non-reimbursable expenditures or significant underspending for staffing occurred, it should resolve such determinations in a manner consistent with section I (A through F) above.

C. Negotiated Cost-Based Unit Rate Contracting

Under these contracts, the provider is paid a per-unit rate for a specific program on the basis of a budget negotiated between the purchasing agency and the provider, with prices authorized by DPS. In the event of a determination of any variance between reimbursement received under contracts funded by such prices and a provider's actual allowable expenses associated with such contracts, the information will be reported to DPS and the purchasing agency. This information is reported to DPS and the purchasing agency in the UFR supplemental schedules and the OMB A-133 Single Audit Schedule of Federal Financial Assistance. If any variance is greater than provided for in 808 CMR 1.19 (3) Non-Profit Maintenance Expense, DPS will advise the purchasing agency as to the circumstances or practices which may have caused the variance to occur, and how the information has been or should be considered in prospective contract negotiations to prevent such circumstances or practices from causing a reoccurrence of such variances. If the variance is less than that provided for in 808 CMR 1.19 (3) Non-Profit Maintenance Expense, no response will be required. However, if upon further review the purchasing agency finds that non-performance under the contract, fraudulent billing, undocumented reimbursement, non-reimbursable expenditures, or significant underspending for staffing occurred, it must resolve such determinations in a manner consistent with section I (A through F) above.

SAMPLE

ADMINISTRATIVE AUDIT COMPLIANCE AGREEMENT

This Agreement is entered into between the PPA_____and the provider_____.
In response to an_____audit (type of audit, e.g., State Auditor) the Provider agrees to implement the corrective measures set forth therein.

In case of default, non-compliance or substantial delay in implementing the corrections set forth in Attachment A, the Department reserves the right to reevaluate all contractual relationships with the Provider for the purpose of amendment and/or termination.

FOR THE PPA	FOR THE PROVIDER
_____	_____
SIGNATURE	SIGNATURE
_____	_____
TITLE	TITLE
_____	_____
DATE	DATE

This Agreement has been reviewed and is approved by the PPA as to Audit Findings_____. Those audit findings not listed as specifically resolved will be referred back to the relevant PPA representative and Provider for further clarification and/or action.

_____
PPA Contract Director

_____
DATE

SAMPLE

"ATTACHMENT A"

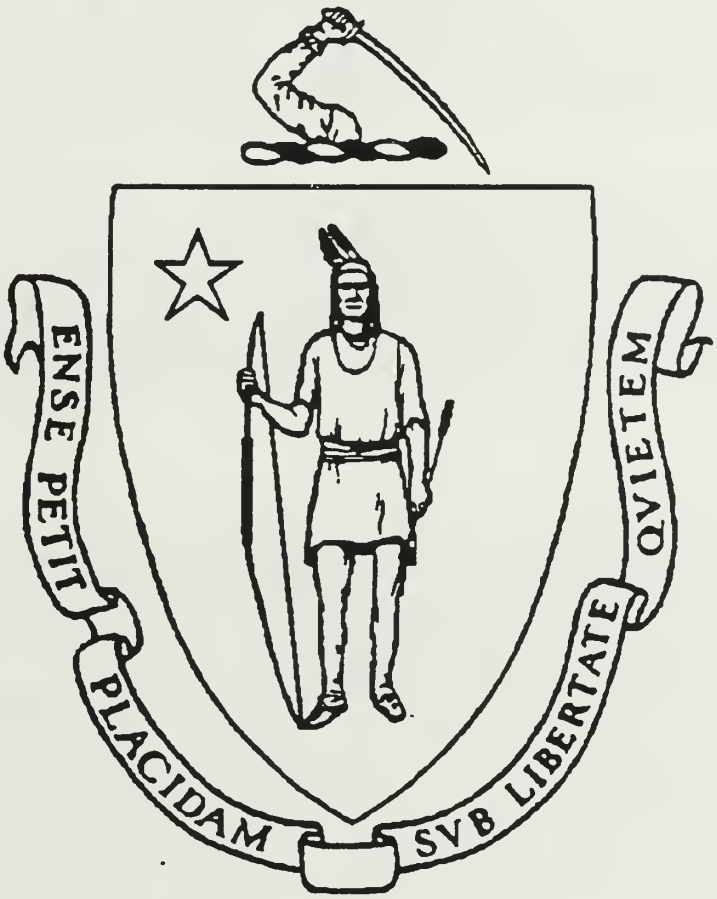
PLAN OF CORRECTION

1. Identify Deficiency	2. Corrective Measures to be Taken	3. Time Frame

4. Repayment Plan and Schedule, if applicable

5. Other Actions

Commonwealth of Massachusetts
Division of Purchased Services
Bureau of Audit



Related Party Relationships and Disclosure Under 808 CMR 1.02

December, 1992

Document Number DPS-A032

RELATED PARTY RELATIONSHIPS AND DISCLOSURE

INTRODUCTION

The Bureau of Audit of the Division of Purchased Services has developed this document to address the interest and concern of various parties regarding the impact of related party relationships in the procurement and pricing of social service programs under 808 CMR 1.00 and 808 CMR 2.00. It is intended to address the issues of what is a related party, why are we interested in these relationships and how do these relationships affect the procurement and reimbursement of social services. As this is our first attempt at setting all of these issues out in a comprehensive document, we welcome, upon completion of your review, your comments and suggestions to improve the document's readability and usefulness to you as a practitioner, provider or state agency staff member.

We should note that this subject area is, at times extremely complex and that, at various points in this document, we were required to utilize terms and concepts which are quite technical in nature. For this reason users of the document, particularly provider agencies, are advised to seek appropriate professional advice when determining the full nature and extent of related party disclosure requirements and responsibilities which might apply in a given instance.

OVERVIEW

All transactions and events occurring in the delivery of contracted services and reported in contract budgets and financial statements (prepared in accordance with Generally Accepted Accounting Principles) are presumed to be conducted on an arm's-length basis, in keeping with the general conditions of competitive, free-market dealings. Relationships on less than an arm's-length basis between parties may enable one of the parties to exercise a degree of influence over the other such that the influenced party may be favored or may subordinate its independent interests. Moreover, related party transactions and operations may be controlled by one of the parties in such a manner that transactions and contracting procedures may be changed or affected significantly by considerations other than those which occur in arm's-length transactions and/or in activities among unrelated parties. For example, the terms under which a subsidiary leases equipment to another subsidiary of a common parent organization may be directly or indirectly imposed by the common parent and might vary significantly from one lease to another because of circumstances entirely distinct from normal market forces affecting similar leases between unrelated entities.

In those situations in which related party transactions and conditions exist, it becomes important and necessary for the provider to disclose related party transactions and conditions. Disclosure of related party transactions and conditions is necessary inasmuch as it helps users of the information to understand and to form predictions about a provider's past, present, and future operations and activities or to confirm or correct business expectations, and to analyze the extent to which the financial statements may have been affected by the relationship.

RELATED PARTY TRANSACTIONS - GENERAL

To begin, it should be noted that transactions between related parties commonly occur in the normal course of business. Some examples of common types of transactions with related parties are: conveyances, gifts, sales, purchases, and transfers of realty and personal property; services received or furnished (for example, accounting, management, engineering, and legal services); use of property and equipment by lease or otherwise; borrowings and lendings; guarantees; maintenance of bank balances as compensating balances for the benefit of another; intercompany billings based on allocations of common costs; other transactions that have receivables and payables associated with them; and filings of consolidated tax returns. Such transactions between related parties are still considered to be related party transactions even though they may not be given accounting recognition. For example, an organization may receive services from a related party without charge and not record receipt of the services, or organizations may exchange similar property without the existence of a monetary transaction. Although these activities may be transparent from an accounting standpoint, they constitute related party transactions that carry certain disclosure requirements.

DETERMINING THE EXISTENCE OF RELATED PARTIES

Attached, you will find a copy of the related party definition from 808 CMR 1.02 that is utilized for UFR reporting and Massachusetts Purchase of Service contracting purposes. The provisions of the American Institute of Certified Public Accountants (AICPA) Statement of Financial Accounting Standards No. 57 (SFAS No. 57), Related Party Disclosures, has been incorporated into 808 CMR 1.02 for use in establishing the existence of related party relationships and its disclosure requirements. The following related party disclosure worksheet, when used in conjunction with the glossary of terms from 808 CMR 1.02 and the provisions of SFAS No. 57, is intended to aid in determining the existence of related party relationships and the need to disclose such relationships:

Glossary of Terms

a. **Administrator.** A person who performs the duties of management or executes the policies established by policy makers. Administrators normally include program directors, business managers, accounting directors and other persons who perform similar functions that establish or carry out the policies of the organization. Persons without formal titles may also be administrators.

b. **Affiliate.** A person, party or organization that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a provider or enterprise.

c. **Associated.** A person or organization is associated when the person or organization engages in a joint program or business venture directly or indirectly in which the provider or other person or organization receives direct or indirect financial benefit.

d. **Common Control.** Common control is when two or more organizations are directly or indirectly controlled by a party that has the ability to increase or decrease the type, quality or volume of business done by each. A provider or company is under common control with the provider through common ownership or management, even though no transactions occurred, if the common control could have a material impact on the financial statements of the provider by resulting in operating results or a financial position significantly different from that which would have been obtained if the organizations were autonomous.

e. **Common Ownership.** Common ownership exists where there is direct or indirect ownership of ten percent (10%) or more in value of voting stock or five percent (5%) of financial interest in the capital assets or profits of any organization.

f. **Control.** Control is the ability to influence the policies and actions of an enterprise through ownership of voting stock, contracts and/or other methods or is the ability of an individual or organization, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution and/or its management.

g. **Management.** Persons who are responsible for achieving the objectives of the enterprise and who have the authority to establish policies and make decisions by which those objectives are to be pursued. Management normally includes members of the board of directors, the chief executive officer, chief operating officer, vice presidents or other

officials in charge of principal business and program functions (such as contracting, administration, finance, fund-raising, marketing, or program development), and other persons who perform similar policy-making functions. Persons without formal titles also may be members of management.

h. **Official.** A person who is or was within the preceding five years a director, stockholder, partner, administrator, manager or trustee of the provider or another organization.

i. **Relative.** Family members whom an official of the provider or an official in another organization might control or influence because of family relationship. Family members are also individuals who might control or influence an official of the provider or an official in another organization because of family relationship.

In addition, relatives are also family members who might, because of family relationship, control or influence other enterprises that were involved through common ownership or management control with any organization that controls the provider, or is controlled by the provider or is under common control with the provider. Relative means parent, child, brother, sister (whether by whole or half-blood) spouse, adopted child, adoptive parent, stepparent, stepchild, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.

RELATED PARTY DISCLOSURE

WORKSHEET

HOW TO USE THE DISCLOSURE WORKSHEET

The related party disclosure worksheet, when used with the text of the Glossary of Terms and Related Party Transactions-General sections of this document, is intended to aid the reader in determining the existence of related party relationships and the corresponding need to disclose such relationships.

The disclosure worksheet is organized into the eight types of related party relationships that make up 808 CMR 1.02. Column A lists the types of provider financial activity that must occur, as modified by the unique conditions in Column B, for a related party relationship to exist. Column B, in turn, lists the entities that the provider may be related to as well as the unique conditions pertaining to the entity and the provider which may give rise to a related party relationship. Column C is utilized to merely record if a related party relationship and disclosure requirement exists or does not exist.

The reader should begin by reviewing the text on the left-hand side of the page in Column A at number 1. The reader should then proceed to the right (Column B) to make a determination as to whether the financial activity noted in Column A occurred, as modified by the unique conditions with the entities noted in Column B. If the financial activity did occur, as modified with the entity in Column B, the reader should check the YES box in Column C and disclose the related party relationship. If the reader determines that financial activity, as modified, did not exist, then a disclosure is not required and the NO box should be checked. The reader should then proceed to related party relationship number 2 and duplicate the instruction steps to determine if a related party relationship exists or does not exist for all eight types of related party relationships listed.

Column A	Column B	Column C
1. TRANSACTIONS* OR RECEIVABLES AND PAYABLES TO OR FROM THE REPORTING PROVIDER WITH:	A DIRECTOR, STOCKHOLDER, PARTNER, ADMINISTRATOR, MANAGER, TRUSTEE, OR RELATIVE OF SUCH A PERSON OF THE REPORTING PROVIDER NOW OR WITHIN PRECEDING FIVE YEARS.	____ YES DISCLOSURE REQUIRED ____ NO DISCLOSURE NOT REQUIRED

* SEE RELATED PARTY TRANSACTIONS-GENERAL FOR DEFINITION OF TRANSACTIONS.

** DISCLOSURE IS REQUIRED EVEN THOUGH NO TRANSACTIONS OCCURRED IF THE CONTROLLING PARTY HAS THE <u>ABILITY</u> TO AFFECT OPERATING RESULTS OR FINANCIAL POSITION OF CONTROLLED PARTY.

THE GLOSSARY OF TERMS IS AN INTEGRAL PART OF THIS WORKSHEET.

RELATED PARTY DISCLOSURE

WORKSHEET

Column A	Column B	Column C
2. TRANSACTIONS* OR RECEIVABLES AND PAYABLES TO OR FROM THE REPORTING PROVIDER WITH:	ANOTHER ORGANIZATION IN WHICH A PERSON OR A RELATIVE WHO SERVED AS A DIRECTOR, STOCKHOLDER, PARTNER, ADMINISTRATOR, MANAGER, TRUSTEE, OR, WAS A RELATIVE OF SUCH A PERSON AND ALSO SERVES IN ONE OF THE SAME CAPACITIES WITH THE REPORTING PROVIDER NOW OR WITHIN THE PRECEDING FIVE YEARS.	____ YES DISCLOSURE REQUIRED ____ NO DISCLOSURE NOT REQUIRED
3. TRANSACTIONS* OR RECEIVABLES AND PAYABLES TO OR FROM THE REPORTING PROVIDER WITH:	ANY ORGANIZATION, CORPORATION, PARTNERSHIP OR FIDUCIARY TRUST, OR INDIRECTLY THROUGH INTERMEDIARIES, WHERE ANY COMMON OWNERSHIP OR CONTROL** IS HELD BY A PERSON WHO IS OR WAS WITHIN THE PRECEDING FIVE YEARS A DIRECTOR, STOCKHOLDER, PARTNER, ADMINISTRATOR, MANAGER, TRUSTEE, OR RELATIVE OF SUCH A PERSON OF THE REPORTING PROVIDER OR ANOTHER ORGANIZATION IN WHICH SUCH A PERSON ALSO SERVES IN ONE OF THE SAME CAPACITIES OR DID WITHIN THE PRECEDING FIVE YEARS.	____ YES DISCLOSURE REQUIRED ____ NO DISCLOSURE NOT REQUIRED
4. TRANSACTIONS* OR RECEIVABLES AND PAYABLES TO OR FROM THE REPORTING PROVIDER WITH:	ANOTHER CORPORATION, PARTNERSHIP, ORGANIZATION, OR OR INDIVIDUAL DOING BUSINESS SOLELY WITH THE PROVIDER OR THE PROVIDERS RELATED PARTIES.	____ YES DISCLOSURE REQUIRED ____ NO DISCLOSURE NOT REQUIRED

* SEE RELATED PARTY TRANSACTIONS-GENERAL FOR DEFINITION OF TRANSACTIONS.

** DISCLOSURE IS REQUIRED EVEN THOUGH NO TRANSACTIONS OCCURRED IF THE CONTROLLING PARTY HAS THE ABILITY TO AFFECT OPERATING RESULTS OR FINANCIA POSITION OF CONTROLLED PARTY.

THE GLOSSARY OF TERMS IS AN INTEGRAL PART OF THIS WORKSHEET.

RELATED PARTY DISCLOSURE

WORKSHEET

Column A	Column B	Column C
5 TRANSACTIONS* OR RECEIVABLES AND PAYABLES TO OR FROM THE REPORTING PROVIDER WITH:	A PERSON OR ORGANIZATION, OR INDIRECTLY THROUGH INTERMEDIARIES, ASSOCIATED IN A JOINT PROGRAM OR BUSINESS VENTURE IN WHICH THE REPORTING PROVIDER OR OTHER PERSON OR ORGANIZATION RECEIVES FINANCIAL BENEFIT.	____ YES DISCLOSURE REQUIRED ____ NO DISCLOSURE NOT REQUIRED
6 TRANSACTIONS* OR RECEIVABLES AND PAYABLES TO OR FROM THE REPORTING PROVIDER WITH:	A PERSON OR ORGANIZATION, OR INDIRECTLY THROUGH INTERMEDIARIES, IS AFFILIATED WITH THE REPORTING PROVIDER AND CONTROLS** THE REPORTING PROVIDER.	____ YES DISCLOSURE REQUIRED ____ NO DISCLOSURE NOT REQUIRED
7 TRANSACTIONS* OR RECEIVABLES AND PAYABLES TO OR FROM THE REPORTING PROVIDER WITH:	A PERSON OR ORGANIZATION, OR INDIRECTLY THROUGH INTERMEDIARIES, IS AFFILIATED WITH THE REPORTING PROVIDER AND THE REPORTING PROVIDER CONTROLS** THE PERSON OR ORGANIZATION.	____ YES DISCLOSURE REQUIRED ____ NO DISCLOSURE NOT REQUIRED
8 TRANSACTIONS* OR RECEIVABLES AND PAYABLES TO OR FROM THE REPORTING PROVIDER WITH:	A PERSON OR ORGANIZATION, OR INDIRECTLY THROUGH INTERMEDIARIES, IS AFFILIATED WITH THE REPORTING PROVIDER AND THE REPORTING PROVIDER IS UNDER COMMON OWNERSHIP OR MANAGEMENT CONTROL** WITH THE PERSON OR ORGANIZATION.	____ YES DISCLOSURE REQUIRED ____ NO DISCLOSURE NOT REQUIRED

* SEE RELATED PARTY TRANSACTIONS-GENERAL FOR DEFINITION OF TRANSACTIONS.

** DISCLOSURE IS REQUIRED EVEN THOUGH NO TRANSACTIONS OCCURRED IF THE CONTROLLING PARTY HAS THE <u>ABILITY</u> TO AFFECT OPERATING RESULTS OR FINANCIAL POSITION OF CONTROLLED PARTY.

THE GLOSSARY OF TERMS IS AN INTEGRAL PART OF THIS WORKSHEET.

RELATED PARTY DISCLOSURE

In situations in which related party transactions or relationships exist, it is necessary for the Provider to disclose such transactions or relationships. Disclosure and/or certification must be made during the contracting process in the following documents:

- In proposal submissions.
- During contract negotiations in Attachment B: Fiscal Conditions (program budget and rate calculation page) of the Standard Service Contract.
- Beginning in Fiscal Year 1994, in Attachment 3 (Affidavit of Compliance) of the Master Agreement.
- During contract prequalification, in the Contracting and Ready Payment Prequalification Form.
- During the annual audit, in the notes to the financial statements of the UFR and if applicable in Supplemental Expense Schedule C, Nonreimbursable Expense Lines (value of nonreimbursable portion of related party transactions).

The following disclosures are required for all material* related party transactions and relationships:

a. Nature of related party relationship;

b. The receivables or payables associated with related party transactions for each period the balance sheet or program budget is presented, and, if not clearly determinable, the conditions and methods of settlement;

c. For each period that an income statement or program budget is presented, the following is required:

(1) A description of transactions and other necessary information needed for an understanding of the impact of the transactions; and

(2) Dollar amounts assigned to transactions, and the impact of determining the terms of the transactions, if different from prior periods;

d. If two or more companies are under common control via ownership or management, the disclosure in a. above is required, even though no transactions occurred, if the

* See question number 10 of materiality and significance section of Questions and Answers for important information concerning materiality.

existence of that control could result in operating results or financial position significantly different from that which would have been obtained if the enterprises were autonomous.

Additional information concerning a provider's affiliated or commonly controlled entities, significant contracted management or direct service arrangements must be disclosed in the Contracting and Ready Payment Prequalification Form. The information includes full disclosure of the related party's organizational structure and relationships, resumes of principals, financial statements and other documentation as may be deemed necessary by the Principal Purchasing Agency.

RELATED PARTY CRITERIA

1. Is there a fundamental concept that can be used to determine if a related party relationship exists?

   Among the criteria that must be reviewed for determining if a related party relationship exists is the fundamental concept of **control**. Inclusion of this key concept suggests that there must exist the ability to directly or indirectly influence the policies and actions of the reporting provider, or that the reporting provider must have the ability to directly or indirectly influence another enterprise's policies and actions. This ability to influence the actions of a provider or for the provider to influence the actions of others may be accomplished through family relationships, affiliation, association, ownership, management, voting stock, contracts or other methods. Actual influence over the policies and actions of an organization does not have to exist or be documented for a related party relationship to exist. Rather, only the mere ability to influence the policies and actions of and organization must be present for a related party relationship to exist. Sometimes two or more organizations are directly or indirectly under common ownership or management control but do not transact business with each other. The common control, however, may result in operating results or a financial position significantly different from that which would have been obtained if the organizations were autonomous. For example, two or more organizations may be directly or indirectly controlled by a party that has the ability to increase or decrease the type, quality or volume of business done by each. In this circumstance the ability to influence the policies and actions of an organization is present and disclosure would be required.

2. How can the ability to influence the policies and actions of an organization be determined?

   It is presumed that the ability to influence the policies and actions of an organization (control) is present by virtue of the existence of the conditions noted in the Related Party Disclosure worksheet (pages 5-7). For example, control exists if the provider has had transactions with a person who is or was within the preceding five years a director, stockholder, administrator, manager, trustee of the provider or a relative of such a person, as noted in number 1 of the Related Party Worksheet. Control would also exist if two or more companies shared some of the same managers (management control), as noted in number 8 of the Related Party Disclosure Worksheet. In other situations such as when organizations are affiliated, closer analysis

may be required to determine if the condition exists (as noted in numbers 6 and 7 of the Related Party Worksheet). For example, two or more organizations may not outwardly appear to be affiliated but the by-laws or articles of organization of the agencies may contain affiliation or other approval and control language directly or indirectly affecting some or all of the organizations.

3. Is it possible to have a related party relationship that must be disclosed even though no transactions occurred?

   Yes. At times, disclosure is required when two or more organizations which do not transact business with each other are controlled by a party that has the ability to increase or decrease or affect the type, quality, or volume of business done by each. Moreover there may be other times in which a disclosure is required when it is clear that a related party relationship exists but the transactions are not given accounting recognition. For example, an organization may receive services from a related party without charge and not record receipt of the services.

DISCLOSURE RESPONSIBILITIES

4. What are the related party disclosure responsibilities of a provider that has a related party relationship?

   The provider is responsible for disclosing all material related party relationships and transactions in accordance with 808 CMR 1.02 and Generally Accepted Accounting Principles (SFAS No. 57), as was previously discussed in the Related Party Disclosure section of this document. The provider should disclose to its independent auditors all related party relationships and transactions, and to provide representations to its independent auditors and others that transactions were consummated on terms equivalent to those that prevail in arm's-length transactions.

5. What are the related party disclosure responsibilities of independent auditors when performing an audit in accordance with Generally Accepted Auditing Standards (GAAS) and Generally Accepted Government Auditing Standards (GAGAS)?

   The auditor her/himself is not responsible for the adequate disclosure of material related party relationships. Rather the auditor's responsibility is to audit and express an opinion on the basic financial statements of the provider that are necessary for presentation of financial position and results of operations and changes in fund balances in conformity with Generally Accepted Accounting Principles. The auditor should follow the guidance in the AICPA

Statement on Auditing Standards No. 45 and AICPA Related Party Auditing Interpretations and other authoritative sources. In addition, the materiality and significance provisions of the third general standard for government auditing of Generally Accepted Government Auditing Standards ("Yellow Book") must also be considered (Attached). For each material related party transaction or common ownership or management control relationship for which FASB Statement No. 57 and 808 CMR 1.02 requires disclosure, the auditor should consider whether he or she has obtained sufficient, competent, evidential matter to understand the relationship of the parties and, for related party transactions, the effects of the transaction on the financial statements. The auditor should then evaluate all the information available and satisfy himself or herself that it is adequately disclosed in the financial statements.

6. What are the responsibilities of purchasing agency staff concerning disclosure of provider related party relationships and transactions?

   Purchasing agency staff should not assume that related party relationships or transactions do not exist in the absence of provider representations that state they do not exist. Purchasing agencies should take steps to confirm during contract negotiations that the provider representations made concerning related party relationships and transactions during prior contract prequalification or negotiations have not changed. If the purchasing agency has reason to believe that all related party disclosures have not been made, then the provider should be asked to provide appropriate written representations and documentation to substantiate, under penalty of perjury, that related party relationships do not exist and that transactions were consummated on terms equivalent to those that prevail in arm's-length transactions. Purchasing agencies may find it necessary to seek the assistance of the Secretariat, the Division of Purchased Services or the State Auditor to determine if related party relationships or transactions exist.

CONSEQUENCES OF NOT DISCLOSING

7. How may the provider be affected if related party relationships and transactions are not disclosed?

   If it has been determined that a provider has failed to disclose a related party relationship or transaction, only the lower of actual costs, versus costs established in the Component Price Catalogue or market value will be allowable

and reimbursed by the Commonwealth. The provider may also become subject to provisions of 808 CMR 1.05 Additional Information Requested by the Division; Examination and Availability of Records; Field Audits and 808 CMR 1.14 Administrative Review. Also, failure to adequately disclose a related party relationship or transaction could affect the provider's ability to meet contract prequalification requirements. Finally, if the independent auditor believes that the provider's representations concerning related party relationships and transactions are unsubstantiated, the auditor would be required to express a qualified or adverse opinion reflecting a departure from generally accepted accounting principles, depending on materiality. Also, legal action may result from failure to adequately disclose a related party relationship or transaction in the Affidavit of Compliance of the Master Agreement, which is made under penalty of perjury.

8. How may the independent auditor be affected if the provider has failed to disclose a related party relationship or transactions?

   Statement on Auditing Standards No. 45 recognizes that an audit performed in accordance with GAAS cannot be expected to provide assurance that all related party transactions will be discovered. Nevertheless, during the course of the audit the auditor should be aware of the possible existence of material related party transactions that could affect the financial statements or of common ownership or management control relationships that might require disclosure even though there are no transactions. The independent auditor is expected to conduct the audit in accordance with GAGAS and GAAS, including SFAS No. 45, even if the auditor has no reason to suspect that related party transactions or control relationships exist. The procedures set forth in SFAS No. 45 are specifically directed to related party transactions. Departures by the independent auditor from GAGAS and GAAS may result in a referral to the state public accountancy licensing authority and/or the appropriate professional society.

Related Party Relationships and Contract Budget

9. How do related party relationships and transactions affect a contract budget?

   When the nonreimbursable value of a related party transaction is disclosed and used to offset total program costs, the Commonwealth only reimburses the provider for the allowable portion of the related party transaction. Disclosure of related party relationships and transactions on the program budget during contract negotiations helps the negotiators make decisions and form predictions about the program's outcomes.